

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 - - - - -X  
4 UNITED STATES OF AMERICA, : 15-CR-252 (PKC)  
5 Plaintiff, :  
6 -against- : United States Courthouse  
7 JEFFREY WEBB, ET AL., : Brooklyn, New York  
8 Defendants. : Wednesday, August 29, 2018  
9 : 9:30 a.m.  
10 - - - - -X

11 TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING  
12 BEFORE THE HONORABLE PAMELA K. CHEN  
13 UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S:

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30 Proceedings recorded by Stenographic machine shorthand,  
31 transcript produced by Computer-Assisted Transcription.

1 (In open court.)

2 THE COURTROOM DEPUTY: This is criminal cause for  
3 sentencing, Docket 15-CR-252 USA versus Juan Angel Napout.  
4 Will the parties please state their appearances for the  
5 record.

6 MS. MACE: Good morning, Your Honor. For the  
7 United States Kristin Mace, Sam Nitze, and Keith Edelman.  
8 Good morning.

9 THE COURT: Good morning.

10 MS. PIÑERA-VAZQUEZ: Good morning, Your Honor.  
11 Silvia Piñera-Vazquez on behalf of Mr. Napout, who is  
12 present to my right.

13 THE DEFENDANT: Good morning, Your Honor.

14 MR. WEINSTEIN: Good morning, Your Honor. Marc  
15 Weinstein for Mr. Napout as well.

16 THE COURT: Good morning to all of you. All  
17 right. As everyone knows, we are here for sentencing in  
18 this matter. Let me start off by putting a few things on  
19 the record. The Defendant Juan Angel Napout was convicted  
20 after the trial on December 22nd, 2017 of Counts 1, 2, and 6  
21 of the superseding S2 indictment.

22 More specifically, the Defendant was convicted of  
23 one count of racketeering conspiracy and two counts of wire  
24 fraud conspiracy in connection with bribery schemes relating  
25 to the purchase and sale of media and marketing rights for

1 the Copa America and Copa Libertadores Soccer tournaments  
2 and the Paraguayan World Cup qualifying matches.

3 The Defendant was acquitted of Counts 3 and 7,  
4 both of which charged him with money laundering conspiracy  
5 in connection with the Copa America and Copa Libertadores  
6 bribery scheme.

7 I have received and reviewed in anticipation and  
8 preparation of sentencing the presentence report by the  
9 probation department dated July 16th, 2018, as well as an  
10 addendum to that report dated August 22, 2018.

11 I have also received a sentencing recommendation  
12 from the probation department dated July 16th, 2018, which  
13 recommends the sentence of 12 years on each count of  
14 conviction to run concurrently, to be followed by two years  
15 of supervised release and each count to run concurrently,  
16 with special conditions. The probation department has also  
17 recommended that restitution to the victims be awarded in an  
18 amount to be determined by me.

19 The parties, I have also reviewed, received and  
20 reviewed the parties' respective objections to the  
21 presentence report, both of which were dated August 8th,  
22 2018, and the Government's response to the Defendant's  
23 objections to the report, and the Government's response is  
24 dated August 20th, 2018. It does not appear that the  
25 defense filed a response to the Government's objections; is

1 that right, Ms. Piñera-Vazquez?

2 MS. PIÑERA-VAZQUEZ: That's correct, Your Honor.

3 THE COURT: Okay. I have also receive the  
4 defendant's very voluminous sentencing submission dated  
5 August 21st, 2018, which numbered about 570 pages, I  
6 believe, and includes, I think, about 200 letters of support  
7 for Mr. Napout. And if I didn't say it before -- I don't  
8 think I did, that's dated August 21st, 2018.

9 I have also separately received a mental health  
10 evaluation of Dr. Hugh Humphrey, which is an exhibit to the  
11 defense submission but came afterwards and separately and  
12 also an inmate evaluation form with was submitted by  
13 Ms. Piñera-Vazquez on August 27th, 2018. And I gather it  
14 was inadvertently omitted from the sentencing submission.

15 Is there anything else I should have from the  
16 defense?

17 MS. PIÑERA-VAZQUEZ: No, Your Honor.

18 THE COURT: I have also received and reviewed --

19 MS. MACE: I'm sorry, there was the independent  
20 submission by someone directly to the Court that's on a  
21 disk.

22 THE COURT: Yes, I was going to mention that, I  
23 don't think --

24 MS. PIÑERA-VAZQUEZ: No, we did not submit that,  
25 Your Honor, that was, I believe, sent directly to the Court.

1 THE COURT: Correct.

2 MS. PIÑERA-VAZQUEZ: Thank you.

3 THE COURT: So next I have the Government's  
4 sentencing submission dated August 24, 2018. Is there  
5 anything else I should have from the Government?

6 MS. MACE: Your Honor, we filed a letter on  
7 August 27th just with two corrections to key citations.

8 THE COURT: Yes, I should have noted that. I did  
9 receive that and noted the corrections to the citation.

10 MS. PIÑERA-VAZQUEZ: Your Honor, if I may, one  
11 other thing, I'm not sure if you mentioned it. We did  
12 submit some pictures to Your Honor directly along with our  
13 sealed submission.

14 THE COURT: I don't think I did get those.

15 MS. PIÑERA-VAZQUEZ: Okay, no, my mistake.

16 THE COURT: You're sure?

17 MS. PIÑERA-VAZQUEZ: Yeah.

18 THE COURT: Okay. Then as noted by the Government  
19 I independently received in electronic format the e-mail  
20 materials from some -- a person who is identified as Edmundo  
21 in the Defendant's sentencing submission, though the  
22 person's full name is in the materials I received.

23 And those materials, including videotape statement  
24 and letter of support by Edmundo as well as what appears to  
25 be a Spanish language television news piece about Edmundo

1 and his physical condition.

2 I have also received statements from the alleged  
3 victims of the Defendant's criminal conduct regarding  
4 restitution and harm caused to those organizations, which  
5 include FIFA, CONMEBOL and CONCACAF; however, as indicated  
6 in a docket entry from last week or the week before, I'm not  
7 going to address restitution at this sentencing, but rather,  
8 that will be deferred for later briefing and a hearing from  
9 the parties, as well as the alleged victims.

10 Is there anything else I should have from any  
11 other -- from any of the parties or otherwise?

12 MS. MACE: I believe that's everything,  
13 Your Honor.

14 THE COURT: Okay.

15 MS. PIÑERA-VAZQUEZ: Yes, nothing from the  
16 defense, Your Honor.

17 THE COURT: All right. Ms. Piñera-Vazquez and  
18 Mr. Weinstein, have you and your client discussed the  
19 presentence report and the addendum?

20 MS. PIÑERA-VAZQUEZ: We have, Your Honor.

21 THE COURT: Okay. Now, aside from the restitution  
22 issue, which will be the subject of a separate hearing, is  
23 either party seeking an evidentiary hearing on any  
24 sentencing issue that we're going to address today?

25 From the Government?

1 MR. NITZE: No, Your Honor.

2 THE COURT: Ms. Piñera-Vazquez?

3 MS. PIÑERA-VAZQUEZ: No, Your Honor.

4 THE COURT: Okay. Now, let's turn to the  
5 guideline calculation. As set forth in Paragraph 85 and 105  
6 of the presentence report, the probation department has  
7 calculated a total offense level of 43, which encompasses  
8 all three counts of conviction.

9 In Criminal History Category 1 that relevants in a  
10 guideline range of life, but that is statutorily capped at  
11 720 months or 60 years.

12 The defense has raised objections to all of the  
13 enhancements applied by the probation department. The only  
14 part of the calculation that the defense does not object to  
15 are the base offense level of 6 and 7.

16 Now I have reviewed the presentence report, the  
17 addendum and the parties' extensive written submission  
18 regarding those objections. And for the reasons that I will  
19 explain momentarily, I am going to adopt the probation  
20 department's guideline calculation in its entirety. I do  
21 not need to hear any additional arguments about the  
22 objections. The defense has certainly preserved them for  
23 purposes of appeal through its written submission.

24 Let me also say that while it is important for the  
25 calculations to be technically correct, they are largely

1 academic because as I will explain later due to the unusual  
2 circumstances of this case, which resulted in  
3 extraordinarily high guidelines range, I am going to find or  
4 I do find that the guidelines range grossly overstates the  
5 seriousness of the Defendant's criminal conduct, so I am not  
6 going to apply the guideline range as my starting point, but  
7 I will explain later what guideline range I think is a more  
8 appropriate starting point.

9           So let me start and explain why I've adopted those  
10 guidelines enhancements and the overall calculation. First  
11 of all as an opening comment, there was an argument made by  
12 the defense in its written submission that I want to put to  
13 rest. There was a suggestion by the defense, and it runs  
14 the throughout their submission that I cannot consider for  
15 any purpose at sentencing acquitted conduct.

16           The money laundering counts, for example, or the  
17 evidence that proves certain facts relating to the money  
18 laundering charge, although quite frankly I think all the  
19 evidence related to all the charges. But it would be  
20 incorrect to say that I cannot consider acquitted conduct  
21 for purposes of sentencing .

22           The Second Circuit said in the *U.S. vs. Vaughan*  
23 that the Court may take into account acquitted conduct if it  
24 finds the conduct established by the preponderance of the  
25 evidence. So just to set the table and make sure we are all



1 on the same page, for purposes of deciding what sentencing  
2 enhancements might apply or what facts have been established  
3 for purposes of sentencing, the standard is a preponderance  
4 of the evidence and not beyond a reasonable doubt as the  
5 jury had defined at trial. Therefore, as found in *Vaughn* by  
6 the Second Circuit, I can consider acquitted conduct so long  
7 as I find that that conduct or facts relating to that  
8 conduct are proved by a preponderance of the evidence. And  
9 *Vaughn* is 430 F.3d 518, Second Circuit case from 2005. And  
10 in effect *Vaughn* endorses the pre-Booker Supreme Court case  
11 *U.S. vs. Watts*, 519 U.S. 148 which is from 1997.

12 Now starting with the loss amount or reasonable  
13 foreseeability argument relating to the 26-level enhancement  
14 for the amount of loss caused by the Defendant's conduct and  
15 the relevant conduct jointly undertaken by him and his  
16 co-conspirators. This would be under 2B1.1B10.

17 As the parties know, the probation department did  
18 apply the 26-level enhancement for losses of between 150 to  
19 \$250 million. This is based on the total calculation of  
20 bribes that were paid and intended or agreed to as part of  
21 the three schemes in which Mr. Napout participated.

22 Now, the objection is based on the argument that  
23 Mr. Napout should not be held accountable for these losses  
24 or they should not be attributed to him because one, there  
25 is insufficient evidence to find that he was aware of the

1 bribes to the other soccer officials, in other words, the  
2 fees bribed were reasonably foreseeable to him, or that they  
3 were undertaken as part of jointly -- I'm sorry, or that it  
4 was undertaken as part of jointly undertaken criminal  
5 activity.

6 The second argument is that only actual loss  
7 should be considered and not intended loss under 2B1.1.

8 And that the third argument is that even if the  
9 intended loss is a proper measure it cannot be calculated  
10 because there's no market analysis of the purported  
11 undervaluation of the media contracts at issue.

12 So as everyone knows the loss amount is  
13 essentially based on the bribery amount. The evidence and  
14 the arguments from the Government being that -- and this is  
15 in part based on an expert -- that the bribes that were paid  
16 represent money that would have been paid to the soccer  
17 organizations had those contracts been negotiated fairly and  
18 at arm's length and without the bribery being involved. So  
19 that the bribe money in effect went into pockets of the  
20 officials rather than into the coffers of the organizations.

21 And then lastly the defendants, Defendant, rather,  
22 argues that the evidence is insufficient to show that he  
23 took bribes in connection with the Paraguayan World Cup  
24 qualifiers.

25 First of all, I do find that the bribes that are

1 attributed to Defendant were part of the jointly undertaken  
2 criminal activity, certainly at least by a preponderance.  
3 The evidence at trial showed that the bribes that Mr. Napout  
4 and the other soccer federation presidents took were all  
5 part of the coordinated scheme and one that had to be  
6 coordinated in order to succeed. Moreover there was  
7 specific evidence showing that Mr. Napout, especially when  
8 he became president of CONMEBOL negotiated directly and  
9 discussed directly with Mr. Burzaco who was one of the lead  
10 bribers what bribes were being given, which officials were  
11 receiving bribes and negotiating the amount of those bribes.

12           The evidence which the Government comprehensibly  
13 marshals and summarizes at Pages 17 to 24 of its sentencing  
14 submission shows all of these facts and I'm not going to  
15 repeat those facts, but that's where that evidence is, I  
16 think, quite thoroughly summarized.

17           The standard here, as the parties know, is set  
18 forth as a two-part test. First I have to determine that  
19 the scope of the criminal activity agreed upon -- or, I'm  
20 sorry, I have to determine what the scope of the criminal  
21 activity agreed upon was.

22           And secondly if I find the scope of the activity  
23 to which the Defendant agreed includes the conduct in  
24 question, I have to make a particularized finding as to  
25 whether the activity was foreseeable to the Defendant. So

1 that is why I just recited some of those facts which I think  
2 are set forth in the Government's submission.

3 In particular, as I said, I find that Mr. Napout  
4 knew precisely what the scope of the bribery activity was in  
5 each of these schemes because he was directly involved in  
6 negotiating and discussing these schemes overall. I will  
7 recite some of the official testimony or at least highlight  
8 it. The co-conspirator Luis Bedoya testified at trial about  
9 how Mr. Napout stressed to Mr. Bedoya, another conspirator,  
10 that the bribe has to be received in a secure way and that  
11 that is why he was receiving his bribe in cash.

12 Also the evidence showed that in 2013 and '14  
13 Mr. Napout met with Burzaco and Grondona who was one of the  
14 main leaders of this group in Buenos Aires to discuss the  
15 ongoing bribe payments to all of the relevant soccer  
16 officials.

17 In particular Mr. Napout was one of only three  
18 soccer officials, along with Grondona and Romero, who  
19 received full information about all of the bribes relating  
20 to CONMEBOL tournaments. Mr. Napout also discussed with  
21 Grondona and Burzaco Mr. Napout's ambition to become the  
22 president of CONMEBOL and the jury -- or rather I find by  
23 the preponderance that by obtaining this position Mr. Napout  
24 assured that he would be fully informed and in control to a  
25 large extent the bribe payments to the other soccer

1 officials because obviously the president of CONMEBOL had  
2 considerable control over the actions of the organization.

3 Indeed, after becoming CONMEBOL's president,  
4 Mr. Napout agreed to receive what was identified as the  
5 presidential treatment at trial, which meant that he would  
6 receive \$1.2 million per year for the Copa Libertadores  
7 tournament instead of the 500,000 that the other soccer  
8 officials were receiving and 3 million per addition of the  
9 Copa America versus the 1 million that the other soccer  
10 officials were to receive.

11 All of this evidence which I am just -- which I am  
12 just highlighting some of that evidence, rather, shows that  
13 Mr. Napout not only was aware of the full scope of the  
14 activities being jointly undertaken by all of the soccer  
15 officials but he was actually privy to much more information  
16 than the others and he had a direct role in the negotiating  
17 the terms of many of those agreements.

18 Certainly it was known to him that in order for  
19 the plan to succeed and for these bribery schemes to  
20 succeed, the officials had to operate in unison and to vote  
21 in unison, to approve the media contracts and also had to  
22 agree to take certain steps to prevent other competitors  
23 from bidding on these contracts and to prevent the contracts  
24 from being fairly put out to bid.

25 Lastly I also find that Mr. Napout in particular

1 was conscious of the need for secrecy and to keeping them  
2 secret, hence these conversation with Mr. Bedoya about  
3 getting his money in a secure way.

4           So for all those reasons I find that the bribes  
5 pain to all the other officials were certainly part and  
6 jointly undertaken criminal activity in which Mr. Napout was  
7 involved.

8           I will also note that the argument that Mr. Napout  
9 would not have known or should not be found to have known  
10 about the amounts or the precise amounts of the bribes to  
11 the other officials is not a particularly compelling  
12 argument for the reasons that I've just said, namely that  
13 the evidence shows that Mr. Napout, if anyone, was  
14 intimately familiar with the amount that others received and  
15 also negotiated at times to receive more than them. But  
16 moreover even if he didn't know it at all times and when I  
17 say "it" I mean the precise amount of the other bribes that  
18 wouldn't dispositive in terms of a finding that the activity  
19 was jointly undertaken because certainly in participating in  
20 these bribery schemes he knew that the others had to be  
21 receiving bribes and acting consistent with those bribe  
22 payments to vote the right way on all these contracts.

23           With respect the Paraguayan World Cup qualifiers,  
24 as I said before, the defense argues that the evidence did  
25 not establish by preponderance that Mr. Napout agreed to

1 receive 2.5 million in connection with those matches. I  
2 disagree and obviously I presided at the trial so I'm  
3 familiar with the evidence. But again, the Government  
4 summarizes it quite well at Page 25 of its submission. That  
5 evidence includes testimony about how bribes were made in  
6 connection with qualifier matches as part of the overall  
7 scheme, the FIFA scheme, and more particularly the accounts  
8 or cuentas, C-U-E-N-T-A-S, the ledger of Santiago Peña  
9 documented the fact that under the Hoga tab, which was  
10 Mr. Napout's tab, there were ledger entries indicating that  
11 Mr. Napout was promised and was to receive and was partially  
12 paid some bribe payments for these Paraguayan qualifying  
13 matches. The ledger was introduced, as everybody knows,  
14 along with testimony of Mr. Peña and then the testimony of  
15 Mr. Burzaco as well.

16 So there -- there was more of a preponderance of  
17 evidence introduced at trial to establish that Mr. Napout  
18 was both promise and partially received \$2.5 million in  
19 bribes in connection with the Paraguayan qualifying matches.

20 Thus I do find that the record demonstrates beyond  
21 a preponderance that the bribes made to other soccer  
22 officials in connection with the Copa America and  
23 Copa Libertadores tournaments after 2010 were part of the  
24 criminal activity jointly undertaken by Mr. Napout and his  
25 co-conspirators with respect to those tournaments, that

1 Mr. Napout received and/or was promised \$2.5 million in  
2 bribes for the Paraguayan World Cup qualifiers and that the  
3 value of all of the bribes either paid or promised as part  
4 of these three schemes should be counted for purposes of the  
5 loss amount attributable to Mr. Napout, which results in a  
6 26-level enhancement under 2B1.1.

7 Now turning to the foreign conduct sophisticated  
8 means enhancement.

9 MR. WEINSTEIN: Your Honor, I apologize. Would it  
10 be possible to be heard on that before we go on?

11 THE COURT: Go ahead.

12 MR. WEINSTEIN: I understand Your Honor didn't  
13 want to hear argument necessarily, but I think Your Honor  
14 adopted some of the arguments or the marshaling of the  
15 evidence that was in the Government's brief and I think we  
16 have some responses we haven't been able to put on the  
17 record.

18 THE COURT: Go ahead.

19 MR. WEINSTEIN: May I do that?

20 THE COURT: Go ahead.

21 MR. WEINSTEIN: May I use the podium, Your Honor?

22 THE COURT: You can although my concern is that  
23 you keep your voice up.

24 Go ahead.

25 MS. PIÑERA-VAZQUEZ: We're prepared.



1 THE COURT: Yes, you know the drill.

2 MR. WEINSTEIN: Thank you, Your Honor.

3 With respect to loss amount --

4 I understand your findings, Your Honor, with  
5 respect to the scope of the conspiracy. I think one of the  
6 issues we want to raise is how it is that the Government  
7 marshaled that evidence in the brief. I'm not going to go  
8 through all of it, obviously, but I want to point out a few  
9 issues in that the argument we have on loss amount is not  
10 that the Government didn't have sufficient evidence to  
11 participation overall conspiracy, that's an argument for a  
12 different day. And the way the Government marshaled its  
13 evidence in its brief really goes to that. It doesn't go to  
14 whether Mr. Napout agreed upon the scope of the bribes that  
15 are in those Government charts for over \$150 million or that  
16 it was reasonably foreseeable. And I want to go through a  
17 few of the things Your Honor said how the Government  
18 marshaled its evidence and why we think it's a problem how  
19 they did that for this purpose, sentencing.

20 But I want to start with what is the most glaring  
21 example of how the evidence at trial could not possibly  
22 support a finding that Mr. Napout agreed upon the scope of a  
23 10 million-dollar bribe to Mr. Webb or that that was  
24 possibly reasonably foreseeable. That certainly there was  
25 evidence about that bribe at trial. Not a single person

1 testified connecting Mr. Napout to that bribe whatsoever.  
2 He was not an CONMEBOL official, he was a CONCACAF official.

3 THE DEFENDANT: The other way around.

4 MR. WEINSTEIN: No, no, I'm saying Mr. Webb was  
5 not a CONMEBOL official. I understand, but Mr. Webb himself  
6 was not a CONMEBOL official, he is a CONCACAF official.

7 The Government cooperators discussed that bribe.  
8 They had every incentive to have the cooperators tie that  
9 bribe somehow to Mr. Napout's awareness, they don't it and  
10 they didn't argue it in closes whatsoever and they don't  
11 touch it in their brief. It's just not mentioned.

12 It's -- it's not clear why that 10 million is  
13 being included for this purpose. It gets them over the next  
14 level of \$150 million. There's simply no evidence to make a  
15 finding that that was within his agreed upon scope and  
16 reasonably foreseeable to him.

17 With respect to a few of the points that  
18 Your Honor had in how the Government marshaled the evidence  
19 and Your Honor pointed to within the Pages 17 to 24 that  
20 there is -- that the Government says there's evidence that  
21 in 2013 and 2014 Mr. Napout met with both Mr. Burzaco and  
22 Mr. Bedoya on frequent occasions to discuss bribes, but then  
23 I know they say that in their brief but then if you look at  
24 that they cite to, Your Honor, they cite to two things. One  
25 is the paragraph in the PSR that mimics the same thing

1 that's based on what the Government says, so that's  
2 circular. And they cite to two pages in the transcript to  
3 that -- that is a big statement that in two years he had  
4 frequent meetings with Burzaco and Grondona where they  
5 discussed bribes multiples times. That's a lot to put into  
6 two pages of transcript, and when you get to that two pages  
7 of transcript it simply doesn't support that. If you look  
8 to what they cite, which is Pages 380 and 381 of the trial  
9 record.

10 The question after Mr. Burzaco says that during  
11 those years there were meetings with him, Mr. Napout and  
12 Grondona, they asked him, question: And when Mr. Napout  
13 would come to Argentina in what context would you see him?

14 Answer: Many times in the context of having  
15 meetings with me and then going to Julio Grondona's house.  
16 I'm talking about 2013 and the first months of 2014 going to  
17 Grondona's house having conversations, the three of us, and  
18 those conversations to a great deal were regarding politics  
19 and his desire to become the next CONMEBOL president.

20 There's no dispute that Mr. Napout at some point  
21 had a desire to become CONMEBOL president, and as a result  
22 of that, had political discussions on that topic with  
23 Mr. Grondona. But the trial testimony they cite does not  
24 support the fact that there were multiple meetings in those  
25 two years with Grondona where bribes were discussed. That

1 is the issue of how they're marshaling the evidence. They  
2 make a lot of statements about what he might have known and  
3 they point to a lot of trial evidence. We're not arguing  
4 there wasn't generally jointly undertaken activity but to  
5 find that he was accountable for every one of those bribes  
6 in the chart, there's just not evidence to support all of  
7 that. We're not saying there's not some evidence in there.

8 But another example of that, Your Honor, in  
9 addition to the Webb bribe, is Mr. Bauza was not supposedly  
10 in the Group of Six, he received one payment according to  
11 their chart, I believe \$400,000. I'm forgetting the year  
12 offhand but earlier in the period of time. There's simply  
13 no evidence that Mr. Napout agreed upon that scope of  
14 activity or was aware of it.

15 And the problem with saying he was aware of the  
16 entirety of -- we're talking about 20 different people  
17 getting bribes for three purported schemes over the course  
18 of six years is -- it goes against actually the premise of  
19 the case which was there was a Group of Six that could  
20 outvote everybody else, that the point of it was that it was  
21 a majority voting block. It was, according to the  
22 Government's theory of that, unnecessary for them to need  
23 anybody else to get anything done. That was the whole point  
24 of having the Group of Six, a voting block, so while, you  
25 know, we could discuss whether he should be held accountable

1 for all the Group of Six's bribes, beyond that the evidence  
2 that he would have known and it was agreed-upon scope that  
3 he joined with the other 14 people it's sort of undermined  
4 by the Government theory of the case against Mr. Napout.

5 The last thing on this, Your Honor, because I  
6 don't want go one by one. We did it in our brief. They did  
7 not respond to that. They really didn't. I understand they  
8 marshaled the evidence as to why there was a broad  
9 conspiracy but that's the trial. This is sentencing, it's a  
10 very different standard. And that's the Paraguayan  
11 qualifiers.

12 Your Honor rightly pointed that the Government  
13 marshaled what it says is the evidence of that on Page 25.  
14 If you look at the cite that they put on 25 you can skip  
15 down, most of them have -- there is general discussion about  
16 qualifiers generally being in the mix, we understand that.  
17 We understand that's the conspiracy. But what is the  
18 evidence they marshaled here as to the fact that there was  
19 actually a scheme in connection with the Paraguayan  
20 qualifiers, not just that he actually got money but there  
21 was a bribery scheme? The only thing in this entire page  
22 that touches on Paraguay at all is the six pages of  
23 transcript from Mr. Peña from 1168, I think it's really  
24 through 1174, approximately that.

25 So for starters no other person at trial testified

1 that there was such a scheme. Mr. Peña himself had no  
2 knowledge of such a scheme. He understood from his boss  
3 that he was paying Mr. Napout in connection with those  
4 qualifiers. He had no personal knowledge of how the  
5 contract from 2011 came into being, whether there was an  
6 agreement at the time to exchange bribes in connection with  
7 that 2011 contract. Nobody else at trial testified about  
8 that.

9 In fact, they didn't even put in the contract by  
10 which Ciffart got the rights for broadcasting. They put in  
11 a contract in 2011 where Ciffart then sold the right to Full  
12 Play. But as far as there being an agreement between APF,  
13 the Paraguayan federation and Ciffart for those rights, they  
14 didn't enter a contract and they didn't have a single  
15 witness discuss what went on in connection with that  
16 agreement, if there was an agreement.

17 So it's -- our argument is actually that there's  
18 no evidence in the record and certainly not to make a  
19 finding for sentencing purpose that that scheme existed and  
20 the jury, just to be clear, didn't have to make a finding on  
21 that. It was not its own Count, so there is no jury finding  
22 specifically for the Paraguayan qualifiers.

23 THE COURT: Just to go back a minute to the  
24 Ciffart agreement, is there the agreement for Ciffart to  
25 sell? And for the court reporter that's C-I-F-F-A-R-T.

1 It's traffic backwards.

2 MR. WEINSTEIN: Two Fs, Your Honor.

3 THE COURT: Yes, two Fs because it's Traffic  
4 backwards, as I recall in the trial.

5 But if there's a contract between Ciffart and Full  
6 Play to sell the rights, then the inference is that Ciffart  
7 had the rights before 2011, so there was a contract signed.

8 MR. WEINSTEIN: Yeah, yeah. No, I'm saying  
9 absolutely. In the Ciffart and Full Play contract it  
10 actually says if Ciffart had obtained these rights through  
11 some kind of contract from APF. Yeah, we're not disputing  
12 that Ciffart at some point got the rights. The issue is, I  
13 think, the Government's theory would be that when Ciffart  
14 got the rights from APF and Mr. Napout was its president, at  
15 that time at 2011 there was some exchange of you get the  
16 contract, Ciffart, I get the money.

17 First of all that contract itself is not in  
18 evidence. They never put it in. There's reference -- we  
19 understand it's got to exist but the point is nobody was  
20 able to testify what happened when that contract was issued  
21 and supposedly there was an agreement back. Nobody.

22 THE COURT: But bear in mind, I think, that is --  
23 the statement you are making is true by a lot of the  
24 evidence in the case and because of the nature of the secret  
25 arrangements, a lot of it -- evidence is circumstantial and

1 the jury was required to draw up, as am I, inferences from  
2 that evidence. So the logical inference from everything  
3 you're saying and this would be under the preponderance  
4 standard is that at the time Mr. Napout was the president of  
5 APF, there was a contract negotiated with Ciffart for the  
6 media rights for the qualifiers and that preceded 2011  
7 because in 2011 those rights were sold by Ciffart to Full  
8 Play, ergo Mr. Napout as the president of APF would have had  
9 to sign that contract --

10 MR. WEINSTEIN: Can I stop you there?

11 THE COURT: Okay.

12 MR. WEINSTEIN: I don't think that's the case. Of  
13 course, we can't tell you for sure because they didn't put  
14 in the contract.

15 THE COURT: Let me stop you then, though.

16 MR. WEINSTEIN: Yes.

17 THE COURT: Coupled with that you have testimony  
18 through Mr. Peña who said that I who kept this ledger very  
19 faithfully and was accurate in my recordkeeping was told,  
20 and this is a co-conspirator statement so it got admitted,  
21 that we're paying Mr. Napout X, \$2.5 million but broken down  
22 into installments for the Paraguayan qualifiers and this  
23 person, who obviously was handling a lot of money and took  
24 his responsibilities quite seriously, distributed some of  
25 that money and kept an accounting of that.



1           Why isn't that enough evidence by preponderance to  
2 show that Mr. Napout who was in the position of being the  
3 president and who, according to one of the co-conspirators s  
4 was receiving bribes in connection with the qualifiers and  
5 those rights were actually sold from Ciffart to another  
6 company, Full Play. Why isn't that enough to find by a  
7 preponderance that he actually was involved in such a scheme  
8 and that he did have a role in granting first the contract  
9 to Ciffart and then later to another company?

10           MR. WEINSTEIN: So for a few reasons. Starting  
11 with the contract itself, I think as I noted when Your Honor  
12 was describing the potentially circumstantial inferences, we  
13 don't even have a contract. Yes, it was -- if it existed,  
14 presumably it existed in some form, and came into being  
15 while he was the president of the federation but as far as I  
16 know he didn't sign. So to the extent he didn't sign it  
17 which, of course, we can't confirm or not because it's not  
18 in evidence, that sort of undermines the premise from the  
19 get-go. But --

20           THE COURT: But it doesn't undermine the premise  
21 because you say as far as you know it didn't exist. The  
22 question is, based on the evidence that was introduced, is  
23 it a reasonable inference that he was the person who signed  
24 that contract in exchange for receiving these bribes that  
25 were documented in the ledger.

1           MR. WEINSTEIN: No, I don't think you can -- there  
2 is no inference to be drawn from the lack of a contract that  
3 he signed it, assuming it existed.

4           THE COURT: Well, no, clearly there was a contract  
5 with APF and Ciffart. That is undisputed, right, because  
6 they sold the right. I say undisputed but that's  
7 established by the selling of the rights in 2011.

8           MR. WEINSTEIN: That's an inference I think I can  
9 go with you on.

10          THE COURT: And then there is testimony, direct  
11 testimony from Mr. Peña saying I kept this ledger and I was  
12 instructed to disperse \$2.5 million or that that amount  
13 would be dispersed over time to Mr. Napout for -- in  
14 exchange for a contract that was granted -- and I don't  
15 recall the testimony exactly -- but I guess granted to Full  
16 Play, I guess, ultimately, right, as happened in 2011. I  
17 guess actually maybe that's more of the point here. I don't  
18 know what Ms. Mace is going to say. The Government's theory  
19 is that what Mr. Napout did was get the money to grant the  
20 contract to Full Play; is that correct?

21          MS. MACE: Your Honor, the testimony from Mr. Peña  
22 and supported by Exhibit 601, which is the ledger, is that  
23 the ledger is a record of bribes to soccer officials.

24          THE COURT: Right.

25          MS. MACE: And he testified about the fact that

1 those are personal payments, everything that's documented in  
2 that ledger.

3 And with regard to the Ciffart contract and for  
4 the Paraguayan rights specifically, Mr. Peña testified that  
5 qualifiers were something that the Jinkises at Full Play  
6 were paying bribes for and specifically with regard the  
7 Paraguayan contract it doesn't matter who signed the  
8 contract. I think that's a red herring. The issue is  
9 whether Mr. Napout caused Full Play to get those rights and  
10 was compensated with the bribe. And the testimony was that  
11 he did. He received \$2.5 million and it's documented with  
12 exact detail exactly how much he was supposed to receive in  
13 connection with every single contract payment. And so it  
14 is -- I don't think it can be disputed that the contract  
15 resulted in the rights being transferred to Full Play  
16 ultimately. Yes, there is middleman in there, but they  
17 resulted in Full Play taking possession of those rights and  
18 in return Mr. Napout got \$2.5 million promised to him that  
19 he was drawing down on and that's reflected in Exhibit 601.

20 THE COURT: So let's address that more directly  
21 because you're focusing on the lack of a contract between  
22 Ciffart and APF before 2011 but really the relevant one is  
23 the transfer of the rights or the sale of the rights from  
24 Ciffart to Full Play, which was in theory the deal that was  
25 part of the bribery scheme that the Government established

1 through the ledger.

2 In other words, the contract was supposed to go to  
3 Full Play and it did go to Full Play.

4 MR. WEINSTEIN: So a few things on that, excuse  
5 me.

6 First of all, I understand the inference that's  
7 trying to be drawn, but when Ms. Mace said that the evidence  
8 was that Mr. Peña said that that was for Mr. Napout for  
9 making sure Full Play got the rights, I mean that's not what  
10 he said. I mean he said -- all he said, the only thing they  
11 can rely upon at all, this entire scheme, is that he was  
12 told that the payments he put in his ledger was in  
13 connection with that contract. That's it. He has no  
14 personal knowledge. He conceded as to what -- how that came  
15 about at all.

16 THE COURT: But why does it matter? I mean if the  
17 point is this media company is paying money directly to the  
18 official, the head of APF for a contract to be awarded.  
19 That's bribery.

20 MR. WEINSTEIN: But if -- here's why what happened  
21 between APF and Ciffart is important not -- not necessarily  
22 what happened between Ciffart and Full Play because what  
23 happened between Ciffart and Full Play has no effect on APF.  
24 They have already sold their rights. The issue is whether  
25 APF had sold the rights it can sell to Ciffart in exchange

1 for a bribe. There's simply no evidence that that took  
2 place because nobody at trial had any knowledge of what  
3 happened.

4 THE COURT: But.

5 MR. WEINSTEIN: And if I could just --

6 THE COURT: Yeah, go ahead.

7 MR. WEINSTEIN: -- address for a moment and I  
8 understand we're drawing inferences on circumstantial  
9 evidence, but with respect to the ledger itself, and I  
10 understand if I have no reason to doubt that Mr. Peña wasn't  
11 trying to basically put down, not what he had knowledge of  
12 at all but what Mariano Jinkis told him. I mean, Mariano  
13 Jinkis by all accounts from people at trial was double  
14 dealing, you know, do whatever he could to help himself  
15 personally. He double dealt the Government cooperates with  
16 Hawilla on yes/no, we needed all this money for bribes and  
17 actually they were causing to pay a lot more, that was not  
18 money they were using for bribes.

19 He's entirely untrustworthy. There was no ability  
20 to cross-examine him, so it's left to.

21 THE COURT: Although that was explored at trial.

22 MR. WEINSTEIN: It get that, but this is a  
23 different issue.

24 I don't want to argue the trial verdict. The  
25 issue is whether the particularized findings for sentencing

1 purposes that he is actually on the hook for that stuff can  
2 be made especially where there's no jury finding on this  
3 issue. They didn't charge the scheme as a separate Count, I  
4 mean.

5 And so we're left with really a thirdhand  
6 statement from someone that gave no details, if any at all,  
7 about what actually happened that there was a contract  
8 issued in 2011 or before then, where somebody agreed with  
9 Mr. Napout that, hey, if you issue this we'll give you  
10 bribes. There was no testimony about that.

11 THE COURT: Okay. All right. Thank you. Is  
12 there anything else you wanted to say?

13 MR. WEINSTEIN: May I have one moment, please?

14 THE COURT: Yes.

15 MR. WEINSTEIN: Yeah, I apologize if I'm taking  
16 more time on this issue than you anticipated.

17 But, you know, back to the insufficiency of the  
18 evidence on each of the specific people and look, I'm not  
19 going to argue right now whether he knew someone got 400,000  
20 versus 600,000. The issue is whether he had any reason to  
21 think certain people got any money at all. And, by the way,  
22 just another example of that, he was not part of the Group  
23 of Six. He didn't sign the initial contract back in 2010,  
24 which I think showed that while generally he coordinated  
25 activity, you only need the Group of Six. You don't need

1 everybody to sign a contract and, in fact, Mr. Jadue did not  
2 sign what is like the key contract in this case. It just  
3 goes to show that there is no reason for him to have known  
4 or think he was in the agreement with everybody to make this  
5 happen and there was simply, again, no evidence at trial  
6 that -- if the evidence at trial was Mr. Jadue felt like  
7 left out so he becomes the 7th member of the Group of Six.  
8 So you don't knee a 7th member to have voting block six and  
9 the issue is whether Mr. Napout would have any reason to  
10 think he was agreeing to have Mr. Jadue involved or that  
11 bribes to him were reasonably foreseeable.

12 We're talking about \$8.8 million worth of bribes.  
13 And for sentencing purposes the record just doesn't support  
14 a finding that he agreed upon that scope and that was  
15 foreseeable to him. Look, those are examples. Obviously we  
16 went through some of them and I'm not going to torture  
17 Your Honor on that point but I think you understand where  
18 we're coming from.

19 THE COURT: No, I appreciate your comments.

20 Let me hear from the Government. Thank you. Why  
21 didn't you keep that on in case you need it later, just turn  
22 off the -- have Ms. Piñera-Vazquez help you with that.

23 So do respond, Ms. Mace, to the arguments about  
24 his knowledge or the foreseeability of all the other bribed  
25 officials, and in particular focus on the CONCACAF versus

1 CONMEBOL issue he raised as well as Mr. Bauza and this  
2 notion that the Government's theory is that the Group of Six  
3 was a voting block so therefore it might only be reasonably  
4 foreseeable to him that would be aware of the bribes  
5 received by the Group of Six but beyond that he didn't  
6 necessarily think or know that bribing anyone else was  
7 necessary.

8 MS. MACE: Your Honor, I think it's important to  
9 start with the elements listed in the provision 1B1.3 in  
10 order and deal with them as they are set out there.

11 And the first one asked the Court to determine  
12 what the scope of the jointly undertaken activity is. And  
13 so our response to the arguments in the defense brief, they  
14 ask the Court to do something different than what the  
15 enhancement is asking the Court to do.

16 The defense asks the Court to try to determine  
17 whether Napout himself participated in the bribes of each of  
18 these individual other co-conspirators and that's not the  
19 right question.

20 The question is to look at what the scope of the  
21 activity at issue is. And so here --

22 THE COURT: But isn't the test the reasonably  
23 foreseeable scope?

24 MS. MACE: That's the next step.

25 THE COURT: Right.



1 MS. MACE: But the first test is to determine what  
2 the scope of the jointly undertaken activity is.

3 And here Mr. Napout jointly undertook to carry out  
4 schemes with other soccer officials to award lucrative  
5 contracts in exchange for bribes. And so the conduct at  
6 issue is the scheme and so you have the Copa America and the  
7 Copa Libertadores and the Paraguayan World Cup qualifier  
8 rights. And just to step back for a moment we have not  
9 asserted that Mr. Napout is responsible for all of the  
10 bribes in the case. There is many, many more that are  
11 carved off here and we looked only specifically at the  
12 specific scope and the conduct at issue here.

13 And I think one of the examples in the guidelines  
14 is instructive in how to assess this first aspect of the  
15 loss analysis. And I'm referring to 1B1.3 Application  
16 Note 4. And there there's a pretty simple example. But it  
17 describes how Defendant A is 1 of 10 people hired by  
18 Defendant B to off-load a shipment of marijuana from a ship.  
19 And during the off-loading of the ship it's interrupted by  
20 law enforcement and not all of the marijuana is off-loaded  
21 but it's all seized and the guideline says the Defendant A  
22 is responsible for the full amount of the marijuana  
23 off-loaded. It doesn't matter how many boxes he picked up  
24 and carried off. It doesn't matter if he knows who Numbers  
25 9 and 10 are, if he specifically understands their degree of

1 knowledge, he knows he is there that day to off-load the  
2 drugs from that ship. And so he shows up, he does it and he  
3 is responsible for that full amount of that conduct.

4 Now if there's a second ship or one the next day,  
5 he's not responsible for that because what he undertook was  
6 to get this ship off-loaded with the drugs. And so here I  
7 think by analogy we have the specific contract at issue and  
8 what he undertook was to exchange those contracts for bribes  
9 and to ensure that the bribe payments for marketing  
10 companies would get those contracts and that's exactly what  
11 he did and so all the other conduct that falls within that  
12 scope is attributable to him.

13 Now the next step is foreseeability and that's the  
14 first question and so we did not respond in the way that the  
15 defense wanted us to by saying whether Mr. Napout was  
16 involved in every single bribe to every single person. We  
17 said this is the scope of the conduct and this is how the  
18 Court accepted that first aspect of the enhancement.

19 Then you move on to foreseeability and there was  
20 ample evidence -- well, let me just say -- I'm sorry, one  
21 more note on the scope, and I'll talk about Mr. Webb here.

22 So with regard to the Copa America Centenario  
23 scheme the scope there was to sell these rights, including  
24 the 2016 Copa America Centenario.

25 THE COURT: Right.

1 MS. MACE: An essential aspect of that scheme was  
2 that it would be not just CONMEBOL, it would be CONCACAF and  
3 CONMEBOL together.

4 THE COURT: Right.

5 MS. MACE: So Mr. Webb's conduct in ensuring that  
6 the FIFA and the FIFA partners could get those rights were  
7 absolutely within the scope of that scheme because that's  
8 how they ensured that the FIFA would keep those rights.

9 And I'll just note as -- well, and so I think on  
10 that first step the scope is clearly when it's clearly  
11 defined, it's clear that each of the bribes that are listed  
12 in the PSR with regard to those people who participated in  
13 that scope, should be attributable to Mr. Napout.

14 THE COURT: I guess the question, though, is the  
15 second part of the test that we're talking about requires me  
16 to make a particularized finding that it was reasonably  
17 foreseeable to this Defendant that all of these other bribes  
18 would be made and the one in particular that the Defendant I  
19 think legitimately focuses on is the Webb slash  
20 or backslash, Sanz, S-A-N-Z, bribe of \$10 million. Now I  
21 gather that your argument is because the Defendant,  
22 Mr. Napout, certainly was aware of the fact in order for the  
23 2016 Centenario, Copa America or the Copa America Centenario  
24 Tournament to go to Datisa, they had to get the buy-in quite  
25 literally of the CONCACAF officials which at the time I

1 think Webb was the head of the CONCACAF; is that right?

2 MS. MACE: Yes.

3 THE COURT: So your argument in terms of  
4 satisfying the second factor or the second part of the test  
5 is that the evidence was clear that the Datisa contract  
6 could only be awarded if both CONCACAF and CONMEBOL agreed  
7 to give it to them to Datisa, that is. And that satisfies  
8 the particularized finding requirement.

9 MS. MACE: Here, Mr. Napout clearly entered into  
10 an agreement to undertake with the bribe-paying entities,  
11 the goal of having these rights secured for Datisa and he  
12 agreed and understood that all the bribes that needed to be  
13 paid would be paid. I think that's the sufficient. But  
14 here actually there's quite a bit more.

15 With regard to Jeffrey Webb, in particular, the  
16 then president of CONCACAF, there's evidence at trial that  
17 he was in frequent contact with the CONMEBOL executives also  
18 and, in fact, there is a recording that was entered into  
19 evidence, there was a discussion between José Hawilla of  
20 Traffic and Aaron Davidson, another a Traffic executive and  
21 this is Government's Exhibit 1702-T. And there is a  
22 discussion about these rights. And in talking about the  
23 Centenario, Davidson said to Webb that he talked to Eugenio  
24 Figueredo, who was the then president of CONMEBOL in  
25 Switzerland. And quote, they talked with Jeff. They all

1 did. They talked. Somehow someone said they knew that he  
2 went to South America and that they received from  
3 Centenario.

4 And so the evidence was they all talked to Jeffrey  
5 Webb. They understood that he was coming to South America  
6 to join in this agreement. And then, in fact, the evidence  
7 was from the testimony of Mr. Burzaco that Jeffrey Webb  
8 traveled to Chile where then Mr. Figueredo set up a meeting  
9 between Burzaco and Webb to arrange the details of those  
10 bribe payments.

11 So this is not a situation where you have CONCACAF  
12 and North America completely separate, and CONMEBOL in South  
13 America. There is a joint activity to get this deal done  
14 and whatever bribes needed to be paid would be, and, in  
15 fact, Webb came down and made that deal in South America and  
16 the evidence was they all talked to Jeff.

17 THE COURT: Okay. All right.

18 MS. MACE: And so --

19 THE COURT: Go ahead.

20 MS. MACE: -- with that I think certainly there's  
21 enough to meet the second aspect of the loss enhancement  
22 with regard to foreseeability. But even if that evidence  
23 weren't there, there would still be enough that they  
24 undertook this and Mr. Napout in particular understood that  
25 bribes were going to be paid to each individual that

1 needs -- whose vote needed to be secured.

2           And like the example of off-loading the drugs from  
3 the boat, it's not essential that he knows the name of every  
4 single person or the amount or those specifics or whether  
5 Person Number 11 had no knowledge, the important thing is he  
6 entered into an arrangement to get the metaphor here was get  
7 the drugs off the boat. He was going to get that contract  
8 secured and make sure the rights when to Datisa and that  
9 they were secured there and that's activity they undertook.

10           THE COURT: And that argument basically would  
11 apply to all the other individuals that the defense is  
12 pointing out?

13           MS. MACE: Yes.

14           THE COURT: Mr. Burzaco and some of these other  
15 individuals.

16           I guess the only question, though, then is more  
17 broadly again, if the scheme, though, or if the plan that  
18 Mr. Napout clearly was involved in, namely gathering of this  
19 Group of Six to be a voting block and thereby being able to  
20 unilaterally in some way approve some of these contracts,  
21 what do you say in response to the argument that therefore  
22 that Mr. Napout reasonably could not have -- would not have  
23 expected the other people would need to be bribed? Because  
24 you think an organization like all these media companies  
25 would act in the most efficient manner, right? They would

1 only bribe the bear minimum number of people they would need  
2 to bribe. I'm just gripping on the argument made by the  
3 defense. Wouldn't it be fair to assume that a media company  
4 is going to print as little as possible and only bribe the  
5 Group of Six if that's all they need to make the contracts  
6 work.

7 MS. MACE: Well, there's to reason to think that  
8 that's all that they needed and, in fact, the contract ended  
9 up being signed by were unanimous generally. And even from  
10 the beginning of the Group of Six the testimony with regard  
11 to the formation was that back in 2010 the group was formed,  
12 or at least by that date, and then Mr. Grondona, Julio  
13 Grondona, the powerhouse at the time, said that if you are  
14 six with me, that makes seven. They joined together and  
15 they understood that Grondona was part of this thing as well  
16 and that they were joining into a system, a corrupt system  
17 that was already in place. There was -- over time there  
18 were scandals about Leoz and Teixeira and others, and  
19 certainly there was enough for them to understand that more  
20 people were demanding bribes and they even joined forces  
21 with Grondona from the very beginning.

22 THE COURT: Okay. Did you want to say something  
23 else?

24 MR. WEINSTEIN: I'll be quick on this one, because  
25 I think the two main points, what I heard from Ms. Mace

1 about Webb is a silent concession that there's 0 testimony  
2 at trial at all about Mr. Napout and Mr. Webb, 0. And the  
3 only thing she's now sort of extrapolating is from a  
4 recording between Traffic and Webb, which look, we have no  
5 reason to dispute that they had some bribe agreement because  
6 it's irrelevant to us.

7 THE COURT: Right.

8 MR. WEINSTEIN: But that the proverbial "they" had  
9 some conversation. I mean, that cannot be sufficient  
10 evidence of -- that Mr. Napout agreed upon the scope of this  
11 scheme with Mr. Webb. It just -- it cannot get there.

12 THE COURT: Okay.

13 MR. WEINSTEIN: And just quickly the ship analogy  
14 is a pretty bad analogy. I mean, if you know that the ship  
15 has a bunch of drugs, of course, you don't have to know  
16 whether eight guys are unloading it or 12 guys or what their  
17 names are. Their theory of the case was he understand and  
18 we're not accepting the theory, but it's their theory that  
19 the ship was a Group of Six. All the other 14 are on the  
20 second ship.

21 THE COURT: Okay.

22 MR. WEINSTEIN: How can they possibly extrapolate.  
23 It's their theory. That analogy is not the fact of their  
24 theory.

25 MS. MACE: Your Honor.



1 MR. WEINSTEIN: Just one second.

2 It's like multiple different ships. The ship that  
3 he was on, supposedly, was with five other guys because  
4 that's all they needed. They didn't need Jadue, they didn't  
5 need Bauza, they didn't need all these people. Osuna, I  
6 mean, look we have every example in your brief, Your Honor,  
7 but Osuna, I think it is, the only evidence that Figueredo  
8 came of one of the cooperators and Osuna feels bad, he's not  
9 included so the let me add 600,000 for him. How is that  
10 possibly within the scope of some agreed upon conspiracy and  
11 reasonably foreseeable. I mean, it's just an example but  
12 this is why to go through that chart it just falls apart.  
13 It cannot be the basis for a sentencing context.

14 THE COURT: Go ahead.

15 MS. MACE: Your Honor, I believe the defense is  
16 mystifying the analysis and that example. The question is  
17 whether the scope of the criminal conduct, that scheme, the  
18 jointly undertaken enterprise, and so it is the contract and  
19 the sale of the contract in exchange for bribes. And so you  
20 look at each person and say were they inside that scope?  
21 You don't start with Napout, you start with the scope and  
22 that's the way the guideline enhancement is written. You  
23 look to the scope, you define that and then you look to each  
24 thing and say is that inside or not. And everything  
25 indicates and it's clear from the trial testimony and

1 evidence that there were three separate schemes here and  
2 they were unified schemes. It was important to the bribe  
3 payers, the sports marketing company that there were no  
4 cracks, they couldn't go forward without Brazil and  
5 Argentina and it was clear from the testimony that it was  
6 critical to have the support of Brazil and Argentina and the  
7 sale of the contract is that scope that is at issue here.  
8 And so it doesn't work to say just because they maybe didn't  
9 need an 11th person to off-load the ship that there are  
10 however many boxes he carried doesn't count. It counts  
11 because the issue is that shipment, the issue is that  
12 contract.

13 THE COURT: Okay.

14 All right. Let me say this: I think that the  
15 arguments made by the defense especially supplemented your  
16 oral argument have given me some pause about the inclusion  
17 of the entire scope of this conspiracy. At the same time,  
18 though, I think ultimately, the standard for including  
19 relevant conduct or jointly undertaken criminal activity  
20 under the 2B1.1 is more inclusive and liberal I think than  
21 the defense is arguing. At least that's my interpretation  
22 of it.

23 Again, I'm going to say, though, that this is a  
24 somewhat academic conversation. But I do think it's  
25 important that in terms of the principle I tend to agree

1 with the Government in using the analogy of the boat, I  
2 think, is an appropriate one. Because the scope of these  
3 bribery schemes was definitely, and this was known to the  
4 Defendant broad. It did involve the participation of many  
5 soccer officials and even if the Defendant believed that the  
6 Group of Six might ultimately be enough, the evidence at  
7 trial definitely showed by preponderance at a minimum that  
8 all of the soccer officials were aware of bribes being taken  
9 and the efforts of all these media companies to make bribes  
10 in order to ensure these extraordinarily valuable contracts.

11           There were examples throughout the trial of  
12 knowledge of certain officials getting into trouble, for  
13 example, for taking bribes. And the positions of power that  
14 various officials had with respect to some of these  
15 contracts in the bribe, even if they weren't part of the  
16 Group of 6. So I think based on a preponderance standard,  
17 which is obviously less than the standard that would apply  
18 at trial, I certainly find that the evidence shows that the  
19 bribes that were made to all these different officials was  
20 reasonably foreseeable to the Defendant and was within the  
21 scope of the jointly undertaken activity.

22           Again, and I'm not going to belabor this -- but  
23 even as to CONCACAF, I think the Government is correct that  
24 the particular Copa America contract required the  
25 participation and the agreement of CONCACAF to give the

1 contract to Datisa for that -- for the Centenario. So it  
2 certainly was apparent to all involved, including  
3 Mr. Napout, who was quite frankly more sophisticated I think  
4 than many of these presidents, that as I said before the  
5 buy-in of the CONCACAF made it also essential and that  
6 wouldn't just be bribing necessarily Mr. Webb but also other  
7 individuals to ensure that that particular tournament came  
8 to fruition and was awarded to Datisa.

9 So I am going to find still, though I'm not  
10 dismissing at all the argument made by the defense, but I am  
11 still going to find that the 26-level enhancement is  
12 appropriate based on the evidence showing or satisfying the  
13 requirement of jointly undertaken criminal activity by the  
14 Defendant and the other bribed officials.

15 But as I said, it's -- it's not by no means a slam  
16 dunk, to use the vernacular and sports analogy.

17 Okay. Let me turn now to the factor of or, I'm  
18 sorry, the enhancement of fourth conduct and sophisticated  
19 means. This is under 2B -- you know, what I misstated the  
20 other one earlier. This is 2B1.1B10. And 2 levels are  
21 added because the crime involved a use of sophisticated  
22 means or -- or the commission of a substantial amount of the  
23 crimes or the schemes outside the U.S.

24 The defense doesn't dispute that the plain  
25 language of the provision would apply here but makes more of

1 a policy argument, I would say, about the purpose of the  
2 enhancement which is to enhance the punishment for crimes --  
3 and this is my interpretation of the argument -- that seem  
4 to target victims or be focused on the U.S. as the main  
5 target or individuals in the U.S. as the main targets of the  
6 crime but are conducted outside for the purpose of  
7 concealing the crimes or making detection harder.

8 Mr. Napout's attorneys don't cite any case law  
9 that necessarily suggests that that's the only time the  
10 enhancement can be applied and I think we all agree the  
11 plain language of it applies.

12 But even if I were to accept that as the driving  
13 purpose and I don't think the Government disagrees with that  
14 characterization to some extent, but I think the purpose is  
15 met here because we have a series of crimes that violate  
16 U.S. law, that also use the wire facilities of the U.S.,  
17 also had profits that came out of the U.S. or were going to  
18 come out of the U.S. and had meetings that were conducted in  
19 the U.S. So obviously the Centenario was one of the  
20 tournaments we referenced so there were direct connections  
21 to victims, if you will, or targets or conduct that happened  
22 in the U.S. as well. So I think the purpose, if you want to  
23 interpret it of the enhancement is met here, because a lot  
24 of the conduct was conducted outside of the U.S. I don't  
25 think just incidentally, because all the perpetrators lived

1 or worked outside of the U.S., but in some part to conceal  
2 what was going on with respect to criminal activity that had  
3 a big impact in the U.S. and was partially conducted in the  
4 U.S.

5 So I don't actually buy the argument of the  
6 defense that the application shouldn't apply -- I'm sorry,  
7 that the enhancement shouldn't apply here. It plainly does.  
8 There's no dispute that a substantial amount of the  
9 activity, the criminal activity occurred outside the U.S.  
10 and there were sophisticated means used.

11 I know the defense has made the argument that  
12 Mr. Napout allegedly, but the Government -- but rather I  
13 think the jury found, but defense would still dispute this,  
14 but that he received his bribes in cash and nothing could be  
15 less sophisticated than that. I disagree with that because  
16 cash as was tested to by an expert is perhaps the best way  
17 the conceal one's criminal activity because it's not  
18 traceable and here what proceeded the receipt of cash was a  
19 rather elaborate scheme that involved offshore and shell  
20 companies and sending of money from the company's account to  
21 Buenos Aires where then it was converted into cash through  
22 Cambista, C-A-M-B-I-S-T-A, or other means.

23 So the scheme for concealing the source and the  
24 nature of the bribes that Mr. Napout received, the millions  
25 of bribes was actually a sophisticated means to commit the

1 wire fraud conspiracy that he was involved in. So for all  
2 those reasons I find that the two level enhancement should  
3 apply.

4 Did you want to be heard further on this?

5 MR. WEINSTEIN: Yes, Your Honor.

6 THE COURT: Okay. Go ahead.

7 Go ahead, Mr. Weinstein. Go ahead.

8 MR. WEINSTEIN: Thank you, Your Honor. So I'll  
9 take the second one first, which is the sophisticated means  
10 part of this. So the guidelines state the first step,  
11 sophisticated means are especially complex for intricate  
12 conduct pertaining to execution of concealment and then also  
13 require the Defendant himself who intentionally engaged in  
14 that or caused it to happen. So the theory, as you say, he  
15 wanted cash essentially so it's less -- it's harder to  
16 trace. Let's just accept that as the theory. If that -- if  
17 getting cash as your means of payment in a case gets you to  
18 sophisticated means, every money laundering conviction on  
19 the basis of it's concealing the nature of the proceeds  
20 automatically gets sophisticated means. It doesn't matter  
21 how you do it, it automatically gets it because concealing  
22 is just an element of money laundering.

23 THE COURT: But I think you're skipping over the  
24 steps before that. What about the use of the shell or  
25 offshore companies?

1 MR. WEINSTEIN: Right.

2 THE COURT: That's also part of the --

3 MR. WEINSTEIN: Yes.

4 THE COURT: Go ahead.

5 MR. WEINSTEIN: My apologies. I will address that  
6 in one minute.

7 The use of cash alone, putting aside the issues  
8 Your Honor just raised is like saying that if someone says  
9 let's talk privately with a low voice and not over a  
10 recorded line so it's we can't get caught that that's  
11 sophisticated means. I mean, that's essentially what  
12 getting cash is. It's the simplest form of doing something  
13 and hoping you can't get caught. That cannot possibly be  
14 the definition of especially complex or indicate.

15 Now Your Honor raised, well, in this particular  
16 case it was evidence that ultimately to get the cash there,  
17 there were a whole bunch of mechanisms used.

18 THE COURT: You're going to say that that wasn't  
19 his doing.

20 MR. WEINSTEIN: Not only that it wasn't his doing  
21 but there was no evidence that he even knew of that. So if  
22 the evidence in a bribery case, any bribery case is, okay,  
23 great I'll take the bribe, I would like it in cash, and even  
24 if it -- I want it in U.S. dollars because even though I  
25 live in Paraguay that's what people use. It can't be that



1 you're automatically thinking, oh, they're going to use a  
2 shell company or some account offshore to make it happen.  
3 Of course, you might have to use foreign exchange to  
4 exchange it from one currency to another, but that doesn't  
5 mean it's concealed. You want it in U.S. dollars. That  
6 doesn't mean you're trying to conceal it as a result of  
7 that. There was 0 evidence that he was aware of it.

8           Their theory, again, is that what he was  
9 supposedly telling people is do this simply. Don't use  
10 wires. There's no evidence he used -- you know, sham  
11 contracts, shell companies, offshore accounts for the  
12 purpose of hiding, none.

13           THE COURT: Okay.

14           MR. WEINSTEIN: So I understand others might have  
15 decided do that to get cash places. But this guideline  
16 requires that he intentionally engaged in that conduct.

17           THE COURT: Okay. So move on to the other factor.

18           MR. WEINSTEIN: Sure.

19           Look, I wouldn't consider it a policy statement  
20 really. It's the sentence commission specifically responded  
21 to congressional statute, the Telemarketing Fraud Prevention  
22 Act, I believe it was called in 1998 that said you must do  
23 things in the guidelines to punish harsher in the context of  
24 telemarketing and I know we're not saying that's the only  
25 conduct. It can be applied but where operations are located

1 in the United States and specifically for purposes of  
2 avoided law enforcement here, we're going to move the base  
3 of that operation all over the place. That is what drove  
4 that guideline, the sentencing commission says it. And  
5 here, you know, if the Paraguayan federation didn't move its  
6 office, it is in Paraguay because operating it in the  
7 United States was going to be a problem.

8 CONMEBOL did not move its office to Paraguay to  
9 avoid U.S. law enforcement, that's where they are. That's  
10 where the people there work.

11 I don't think -- the argument that there then was  
12 some stuff in the United States, to me is a little bit  
13 beside the point. The guideline -- the issue with the  
14 guideline is were things moved outside of the United States  
15 to avoid in a sophisticated way, by the way, to avoid law  
16 enforcement.

17 THE COURT: But is it notice also true that the  
18 purpose of this enhancement is literally to provide for an  
19 increased penalty where sophisticated concealment that makes  
20 it difficult for law enforcement authorities to discover the  
21 offense or apprehend the offender is the situation where  
22 this should be applied, not necessarily where the precursor  
23 is, the perpetrator's moved outside the U.S. or located  
24 their operation outside of the U.S. specifically for that  
25 purpose. Because doesn't this enhancement also address the

1 fact of however it happened, that the actions or the  
2 substantial criminal activity of the defendants was outside  
3 the U.S. thereby making detection harder? You don't think  
4 that enhancement should apply in that situation?

5 MR. WEINSTEIN: No, and here's why. I mean, if  
6 they were really doing that they just would have never  
7 started wire transmission from the United States and that  
8 doesn't quite make sense.

9 Okay. We're going to have a wire that's from the  
10 United States and then once it hits overseas we're going  
11 conceal it. I mean, I understand the evidence is generally  
12 that certain people use accounts wherever they might be for  
13 the purpose of concealing but that they did it abroad versus  
14 the U.S. I don't think is the issue here because they  
15 started in the U.S. and I think they had accounts overseas  
16 because that's where these people lived and worked.

17 THE COURT: Well, why wouldn't this enhancement be  
18 used where a crime is committed that affects the U.S. uses  
19 the U.S. wires and the banking system, there are meetings  
20 conducted as part of the criminal conduct in the U.S. and it  
21 seeks to gain profits that are generated in the U.S., why  
22 shouldn't the enhancement be applied in that situation where  
23 the Defendants are doing a lot of their work overseas, their  
24 criminal activity, I should say overseas, thereby making it  
25 more difficult for the Government to detect it and uncover

1 it and prosecute it? Isn't that part of what this  
2 enhancement is directed at regardless of how it is that they  
3 ended up being outside of the U.S.?

4 MR. WEINSTEIN: So I don't think so. I think the  
5 issue of the fact that it might have an impact here and they  
6 did certain things here, I mean, presumably that has to be  
7 the case in every criminal prosecution or else these folks  
8 wouldn't have any jurisdiction.

9 THE COURT: But the thing that is not true in  
10 every prosecution is that a substantial part of the criminal  
11 acts are conducted outside and we're only quibbling over  
12 whether or not that intentionality of doing that outside is  
13 really what the guideline is directed at. And it doesn't  
14 say that, even though I understand that your argument is  
15 they say that part of the purpose, but it doesn't literally  
16 say where the substantial activity is intentionally located  
17 outside the U.S.

18 MR. WEINSTEIN: Look, without a doubt that  
19 subsection B does not specifically say that. I think it's  
20 entirely clear from the congressional record and the  
21 sentencing commission records that that is what is captured  
22 but can I give you an example of what it shouldn't apply in  
23 the circumstances that you're saying? I mean, look, this  
24 anecdotal. I'm sure you can get other examples where it  
25 might have been applied.

1 I don't know if Your Honor is familiar with the  
2 live law cases that qualify, correct? Big investigation,  
3 lot of foreign bankers working at foreign banks  
4 manipulating, allegedly, an interest rate and some of the  
5 prosecutions are here because the theory is that there is  
6 some impacting the United States.

7 One of those folks was tried to conviction in the  
8 Southern District and another pled out in the Southern  
9 District. The words that you're saying, the literal words  
10 have to apply there. They're foreign bankers working abroad  
11 for a foreign bank. Obviously there's some connection to  
12 the U.S. because they have to have jurisdiction. In those  
13 cases the Government never asked for that enhancement and  
14 the Court didn't impose it.

15 A case closer to home, Mark Johnson, the HSBC  
16 trader who was involved in a foreign currency manipulation  
17 of some sort was sentenced in this District about four  
18 months ago. After trial conviction, a U.K. citizen, he  
19 worked abroad for a foreign bank but as far as him  
20 manipulating a foreign currency trade that had some impact  
21 in the U.S. The Government did not ask for that enhancement  
22 and it wasn't applied. Look, I'm sure you can come up with  
23 cases where maybe it was applied similar, but there's a  
24 reason why no one even thought of it there because it  
25 doesn't capture what is intended by the enhancement.

1           THE COURT: Okay, fair enough. I understand what  
2 you're saying on both. I'm not saying I disagree with you  
3 about what the purpose of it might be. But I'm dealing with  
4 the plain language of what it says and I believe that the  
5 sentencing commission would express how they wanted to apply  
6 it if they wanted to limit its application in the way that  
7 you say. That it's not only that substantial criminal  
8 activity occurred outside the U.S. but that it was done for  
9 the purpose of preventing or minimizing the potential for  
10 detection. But they don't say that. And that's what I'm  
11 operating under. The language itself clearly applies here.  
12 And so to my mind I think barring or without the benefit of  
13 to sentencing commission stating otherwise, I'm going to  
14 apply this enhancement.

15           I also find that the sophisticated means applies  
16 notwithstanding your argument because what was clear from  
17 Mr. Napout in particular is that whatever the means were, he  
18 wanted them to be concealed and though you can make an  
19 argument, as you have, and not unconvincingly, just saying I  
20 want it in cash would apply to pretty much any case and  
21 doesn't always result or mean that sophisticated means were  
22 used.

23           Here I think the circumstances were such that  
24 Mr. Napout in demanding that it be concealed in some way or  
25 making that the clear expectation, understood that some kind

1 of more nefarious means to disguise the source of the money  
2 had to be used than simply making it cash. In other words,  
3 at some point when it left the -- when it left the bribers  
4 in some way it shouldn't be traced back to them as well. I  
5 mean, that was part of his concern. And so in order to do  
6 that some means had to be -- he had to anticipate that  
7 certain means had to be used that were more than just  
8 converting it to cash. So I have to believe although,  
9 actually, you know, let me hear from the Government on that  
10 issue because I shouldn't surmise that because they were  
11 conversations between him and the people making the bribes  
12 but there was no direct evidence that they discussed these  
13 offshore accounts.

14           So let me hear from the Government on  
15 sophisticated means issue.

16           (Continued on the next page.)  
17  
18  
19  
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25

1 (In open court; 11:00 a.m.)

2 MS. MACE: Yes, Your Honor.

3 Just to clarify one point.

4 And if I heard Mr. Weinstein right, he said that  
5 there is evidence that Mr. Napout just, "Said do it simply."  
6 That was not -- there is no evidence to that effect at trial.  
7 It was, in fact, the opposite.

8 Mr. Napout sent Luis Bedoya to speak to Mariano  
9 Jinkis and said, "Make sure they're doing it carefully that.  
10 It can't be traced to us." Mr. Bedoya went and had that  
11 conversation and came back and said, "Yes, they are doing it  
12 securely." And several steps were taken to make sure it was  
13 done securely. The ledger was adjusted so that it didn't have  
14 their names on it. It had the fantasy names or the code  
15 names.

16 And also, I think it's important to make clear their  
17 receiving cash in this way is necessarily complicated, and I  
18 think Mr. Napout understood that. This is not a situation  
19 where he was receiving bribes in Paraguayan currency and he  
20 walked to his bank and deposited cash and there is no sort of  
21 effort to conceal that.

22 He was going all over the world, having meetings in  
23 connection with these schemes, and then he arranged for the  
24 Jinkeses to pay him in bribes in a different country, in  
25 Buenos Aries, not his home country in a foreign currency,



1 U.S. Dollars, and then have them transported back to Paraguay  
2 for his use there.

3 Also, there are other things that he specifically  
4 knew about. He knew that there were wire transfers, he had to  
5 have known, and I think it's fair to infer he knew there were  
6 wire transfers in connection with the other bribes he got for  
7 the transfer of the players' rights and for the vacation  
8 rental.

9 And that was a situation where the money was sent  
10 via a Seychelles company, Cross Trading, to a rental company  
11 in Uruguay for his family to use. And it was done in such a  
12 way that it couldn't be traced to him except for the fact that  
13 we uncovered the evidence that tied it together. So several  
14 steps were taken by Mr. Napout, specifically, to make sure it  
15 was complicated and difficult to trace and it was not a  
16 situation where he was receiving simply receiving cash in his  
17 own currency in his own country. Very, very different than  
18 that.

19 THE COURT: That was \$40,000 for the rental?

20 MS. MACE: Yes, Your Honor.

21 In addition, he received -- at the same time, the  
22 evidence showed that he she have had \$50,000 in receive from  
23 Mariano Jinkis in Uruguay during this visit with his family to  
24 the vacation rental.

25 THE COURT: So, again, Mr. Weinstein, you make some

1 good arguments, but ultimately I believe this enhancement does  
2 apply to some of the reasons that I've said.

3           You certainly make a decent argument about the  
4 purpose of this foreign conduct aspect of the enhancement but,  
5 again, I'm relying on the plain language of it and until the  
6 Sentencing Commission makes plain their purpose of this  
7 enhancement, I'm going to assume that it applies.

8           And then, secondly, I do believe there were  
9 sophisticated means that were contemplated by your client in  
10 order to get him the money in cash and to have it be entirely  
11 untraceable from its source until it reached him as well, and  
12 I had momentarily forgotten about the in kind transfers such  
13 as the rental of the Paraguayan luxury apartment. And also,  
14 there were the purchase of the McCartney tickets which I'm  
15 guessing was also done by wire in some way or, who knows, in  
16 other words, a way to conceal the source of the tickets that  
17 went to Mr. Napout.

18           MR. WEINSTEIN: I don't want to belabor this but the  
19 fact that he got paid in the form of tickets -- we're not  
20 talking about the guideline that's addressing specifically  
21 intricate and complex concealment. The fact that you get a  
22 payment in tickets versus cash has nothing to do with  
23 sophistication of the consumer.

24           THE COURT: Yes. But when you have a company go  
25 ahead and rent an apartment for you for \$40,000 and the whole

1 point of it is not to reveal that it's being rented for you,  
2 you have to acknowledge that that's some use of sophisticated  
3 means.

4 MR. WEINSTEIN: Your Honor.

5 THE COURT: You disagree, I understand.

6 MR. WEINSTEIN: I disagree especially in the scheme  
7 of what this case is about. And the fact that he supposedly  
8 went to a different country and have someone pick up  
9 the cash and drive it somewhere. We can get to the evidence  
10 on that which was essentially zero. But the idea that that's  
11 sophisticated, the question isn't here whether he was found  
12 guilty, it's whether these things were sophisticated.

13 THE COURT: Again, by a preponderance standard. So  
14 I'm going to overrule that objection. I'm not accepting that  
15 objection. So the two-level enhancement will apply under  
16 2B1.1(b)(10).

17 Now, the abuse of trust enhancement. The defense  
18 argues that's double counting. That's an argument I rejected  
19 in connection with Mr. Marin's sentencing and will do so again  
20 here for the same reason which is the one that the Government,  
21 I think, correctly points out in its submission that the abuse  
22 of trust enhancement should apply because the 2B1.1 guidelines  
23 that are used to calculate the total offense level don't  
24 incorporate that in any way because the different crimes that  
25 are covered by 2B1.1, which are various forms of fraud or

1 theft, aren't always -- don't always involve an abuse of  
2 trust.

3 The fact that the enhancement doesn't apply where  
4 official conduct is involved makes sense because the  
5 guidelines, the underlying guidelines, isn't 2B1.1 for  
6 purposes of the base offense level but, rather, I think 3C1.1.  
7 And that guideline starts much higher and incorporates the  
8 notion of the abuse of trust. And there, the Sentencing  
9 Commission made clear that that was their intent and,  
10 therefore, the 2B1.1 -- sorry -- the enhancement for abuse of  
11 trust shouldn't be applied.

12 So based on everything that's in the guidelines  
13 itself, as well as the Sentencing Commission demonstrating  
14 that it knew how to prevent double counting in this instance,  
15 I'm not going to get rid of the abuse of trust enhancement and  
16 that will apply.

17 MR. WEINSTEIN: Your Honor, if I may be heard on  
18 that?

19 THE COURT: Very briefly.

20 MR. WEINSTEIN: This is a significant legal  
21 argument.

22 THE COURT: Okay. Go ahead.

23 MR. WEINSTEIN: We don't dispute that there are all  
24 sorts of frauds and many of them do not include an abuse of  
25 trust and 2B1.1 does not address it.

1           In U.S. v. Broaderson, the Second Circuit, in a  
2 fraud case, so it was applying 2F1.1 which is the predecessor  
3 to 2B1.1. So it was dealing with the same guideline  
4 essentially and addressed this issue. If the standard in the  
5 Second Circuit was you only look to the section itself, the  
6 base offense level, and see if the guideline says whether you  
7 can or cannot apply abuse of trust, Broaderson makes no sense.

8           What they said in Broaderson was what's going to  
9 cause the abuse of trust enhancement has to be independent of  
10 the crime. What we are saying is not that all fraud cases  
11 have abuse of trust or not, it's that there is a very small  
12 subset of fraud case us, theft of honest services, that  
13 necessarily, in order to get convicted, have the abuse of  
14 trust with the breach of fiduciary duty. It has to have it  
15 and, therefore, it is baked into the offense level.

16           That's the only -- in Broaderson, that's why they  
17 said it has to be independent conduct.

18           And let me just the Government says Hudson, which is  
19 also Second Circuit is the opposite --

20           THE COURT: Right.

21           MR. WEINSTEIN: -- but here's why it specifically  
22 tells you this is the Second Circuit's approach.

23           Hudson, entirely different case, a Defendant drove a  
24 car into two U.S. Marshals who were trying to detain him. The  
25 Court there sentenced the Defendant under 2B2 point -- it's

1 not 2B, I apologize, I'm forgetting the guideline offense.  
2 But essentially aggravated assault. And the base offense  
3 level, what the Court found there, was because it was a car,  
4 which is not inherently dangerous, in order to be in the  
5 aggravated assault guideline, it has to -- the car was used in  
6 a dangerous ways. Also, it uses a separate enhancement for  
7 using the instrument in a dangerous way couldn't be done.

8 The import of that for this case is the Court is  
9 saying, you don't look to the base offense level to see if it  
10 explicitly says you can or you can't add another enhancement.  
11 You actually can look at the types of offenses. There are all  
12 sorts of assaults.

13 There is only a small subset of assaults, just like  
14 there is a small subset of frauds, where, in order to get  
15 convicted and have that base offense level to apply, it  
16 necessarily includes the conduct that is also the subject of  
17 the additional enhancement. And you can't do it, and this the  
18 important language. In the Second Circuit in that case,  
19 distinguished it, they disagreed with the Fourth Circuit that  
20 came out the other way. And they said, "Finally, the  
21 Fourth Circuit's rejection of the defendant's argument here  
22 was driven by its conclusion that double counting is always  
23 permissible except when explicitly forbidden by the  
24 guidelines. I think that's what your Honor was just saying.

25 That is not the law in this circuit. That's the

1 Second Circuit saying why it completely disagrees with the  
2 Fourth Circuit. They go on to say, "A Defendant cannot be  
3 guilty of assault with a non-inherently dangerous weapon  
4 unless the object is used in a dangerous way. In some  
5 circumstances, it is the use or threatened use of the object  
6 which makes the assault aggravated thereby increasing the base  
7 offense level and you can't also have the enhancement that  
8 captures the same conduct."

9 THE COURT: Here's the problem I'm having with your  
10 argument.

11 One is I want you to reconcile the case cited by the  
12 Government which is, U.S. v. Moskowitz which basically says  
13 abuse of trust is not included in the base offense level of  
14 2F1.1 with the case you cite, Broaderson. Because what seems  
15 common sense to me is that the 2B1.1 guidelines cover a wide  
16 range of fraud and theft. Everything from embezzlement to a  
17 securities fraud or something like that.

18 But your argument would in effect -- I mean, in  
19 other words, I think it would disrupt the guidelines scheme  
20 because if the guideline itself does incorporates various  
21 crimes that don't include abuse of trust but yet applies the  
22 same guidelines to crimes that do include it or don't include  
23 it, and then from the separate provision that says, Where  
24 abuse of trust is involved, add two levels and I ignore that  
25 because of your theory that it doesn't matter because 2B1.1

1 covers all of these. Then it seems to me I've -- I'm not -- I  
2 mean, it makes no sense in some ways the more than that. The  
3 Sentencing Commission clearly wanted to do in a case like this  
4 where the conduct, the general or the base offense level,  
5 rather, and the loss amounts and some of the other  
6 enhancements are applied under 2B1.1, but the one enhancement  
7 or the one factor that's not baked into those guidelines is  
8 the abuse of trust. And then the Commission says, Okay, where  
9 that's part of the crime as here, you should add two more  
10 levels because we didn't intend the 2B1.1 guidelines to cover  
11 that particular form relative fraud namely honest services  
12 fraud.

13 MR. WEINSTEIN: Okay. So I will try to make some  
14 sense out of that. I understand where you've gone and let me  
15 try to make sense out of that.

16 We're not saying that it -- essentially, you can't  
17 have abuse of trust in a fraud case. And I'll give you the  
18 example, a Medicare fraud or an investment fraud. The  
19 Government says that Broaderson, that we cited has been  
20 cabined by the Second Circuit and they cite Ntshona. I'm not  
21 sure how to pronounce it, but I think it's N-t-s-h-o-n-a, a  
22 Medicare fraud case where they said, No, no you can get it in  
23 this case but that's entirely consistent with what we're  
24 saying.

25 In a Medicare fraud case, the abuse of trust that



1 might be applied is unnecessary for the conviction that gets  
2 you the base offense level of six or seven. You can submit  
3 false claims to Medicare and get convicted without any abuse  
4 of trust. It's only applied in some Medicare fraud cases  
5 where the doctor is involved and, you know, the Court would  
6 find he abused, or she abused, their trust vis-à-vis their  
7 patient unnecessary to have been convicted but certainly  
8 warranting an enhancement because the person in that position.  
9 It's an extra -- and that's why it's consistent with  
10 Broaderson. It's independent of the offense of conviction.

11 So we are saying, absolutely, that should be the  
12 law. Simply with an investment scheme, it doesn't require an  
13 abuse of trust. You can have all sorts of investment schemes,  
14 a Ponzi scheme that might not have abuse of trust. But,  
15 regardless, the elements of the offense don't say, yes, abuse  
16 of trust. It just isn't in the base offense level because of  
17 what the conviction is.

18 THE COURT: I see.

19 MR. WEINSTEIN: Then you go on to determine the  
20 facts of the case, putting aside what the elements of the case  
21 were, was there something additional that warrants that  
22 enhancement? We agree.

23 In some kind of investment cases, you have a  
24 discretionary account vis-à-vis your customer, they rely on  
25 you, you should also get the abuse of trust. But it wasn't

1 baked into the offense level because it wasn't necessary for  
2 the offense of conviction.

3 And that's why in Hudson, I know it's an entirely  
4 different context, but the Second Circuit says, We disagree  
5 with the other circuits. You do not look to the offense level  
6 and say, Is there an explicitly conviction instruction to  
7 include or not include a separate enhancement? That is not  
8 the law in this circuit. And that is why Broaderson makes  
9 sense. If that was the law in the case Broaderson makes no  
10 sense.

11 THE COURT: All right. Let me hear from the  
12 Government on that.

13 MS. MACE: Your Honor, I think it's important to go  
14 back to the plain language of the enhancement to start there.  
15 And what the defense is relying on is this provision within  
16 3B1.3 that says this adjustment may not be, "Employed if an  
17 abuse of trust or skill is included in the base offense level  
18 or the specific offense characteristic."

19 Now, those are terms of art, they are used in a very  
20 specific way in the guidelines. And so, if you turn back to  
21 2B1.1, you can see, "Base Offense Level," and that's under  
22 Section A and that is a defined right here in this provision.  
23 Then, you look to 2B1.1(b). It says, "Specific offense  
24 characteristics." That is a defined term and it lists them  
25 all out 1 through 19. And so, this is the way that that term

1 is to be interpreted.

2 Moskowitz is important. It is the more recent case  
3 from the Second Circuit that specifically addressed this  
4 issue. And so, the defense is asking you to go back many  
5 years before Moskowitz to look at cases, some of which don't  
6 even involve fraud. But Moskowitz says very clearly, "Because  
7 abuse of a position of trust is not a specific offense  
8 characteristic, and is not included in the base offense level,  
9 the abuse of trust enhancement was properly applied." So it  
10 is not either of those defined terms under 2B1.1.

11 To the argument that it is somehow essential or  
12 necessary to the count of conviction, we take issue with that  
13 as well. You have wire fraud conspiracy. In the honest  
14 service context even, you can have some participants who do  
15 not have a position of trust.

16 So here you have the bribe payers. They conspired  
17 in the honest services wire fraud, but they will not get an  
18 abuse of trust enhancement because they were not in a position  
19 of trust. They did not abuse that position. They may have  
20 other enhancements.

21 The purpose of the guidelines in these -- this part  
22 of the guidelines is to distinguish between different  
23 defendants so you look for the abuse of position of trust and  
24 see which defendants had that and abused the that and they are  
25 more culpable in this way.

1           And so, you have the bribe payers who will not get  
2   this enhancement but the bribe recipients do. So it is not  
3   necessary to the count of conviction it's the defense is  
4   arguing.

5           THE COURT: What do you say to that, Mr. Weinstein?  
6   That sort of hits you where your argument is. Basically,  
7   there is a form of wire fraud that doesn't involve an abuse of  
8   trust.

9           So even accepting that your pre-2000 case,  
10   Broaderson, should be -- sets for the this principle that  
11   where it's an element of the crime, it cannot lead to a  
12   separate enhancement.

13           How does that if, in fact, wire fraud doesn't always  
14   have to involve abuse of trust? Is it your argument that  
15   because here an abuse of trust had to be shown, there  
16   shouldn't be a separate enhancement?

17           MR. WEINSTEIN: That's exactly right. I think  
18   that's where I started which, of course, not every wire fraud  
19   requires an abuse of trust. It's not dealt with in the  
20   guideline, it's only ones, but there are a very small set of  
21   some like honest services fraud, which is this case, which is  
22   the same thing as the car not being inherently a dangerous  
23   weapon. It's a small subset of assaults that are different  
24   than others that, yeah, the guideline doesn't say it, but it  
25   is baked into your application of the base offense level

1 because it was necessary. You don't have a conviction. You  
2 don't get there without the breach of trust.

3 THE COURT: That's why I have a problem with your  
4 argument because it really does bend, I think, or upend what  
5 the guidelines are trying to accomplish. As the authors or  
6 creators of these guidelines, the Sentencing Commission wrote  
7 them in a way to achieve certain results or calculations at  
8 least, and it shouldn't be based on -- at least the  
9 application of those guidelines -- it shouldn't be based on  
10 the specifics of the case.

11 It may well be based on the elements of the cause of  
12 a charge like wire fraud, for example. But if, in fact, wire  
13 fraud can be proved without abuse of trust, it strikes me that  
14 then to dismiss in some way the abuse of trust enhancement  
15 that they -- that the Commission provided for in a separate  
16 section of the guidelines would, in some way, be undermining  
17 their intent because they write these guidelines obviously to  
18 apply to a broad range of crimes.

19 And I think to make it specific to the exact  
20 permutation or version of the offense that's charged with  
21 specific facts that support the charge, I think would thwart  
22 the purpose of their scheme. And may be Broaderson stands for  
23 that to some extent, but I'm not going to apply that here  
24 because I think that would be contrary to the plain language  
25 of the guideline. I think it does -- I think there is support

1 in the -- at least the Moskowitz decision.

2 MR. WEINSTEIN: Moskowitz.

3 THE COURT: And I think your argument based on a  
4 slightly different statute doesn't necessarily convince me  
5 you're correct partly because of the date of that decision and  
6 partly because I think it would, as I said, upend the scheme  
7 the commission was trying to create by very carefully create  
8 the guidelines in a manner that this did on appeal.

9 Maybe you'll be right, but I don't agree with that  
10 interpretation here at least in terms of the abuse of trust  
11 enhancement for this honest services fraud.

12 MR. WEINSTEIN: Your Honor, what that boils down to  
13 is because 2B1.1 doesn't explicitly forbid the enhancement in  
14 certain circumstances, therefore, double counting is  
15 permissible. The Second Circuit could not have been clearer  
16 that the Fourth Circuit takes that view that the conclusion  
17 that double counting is always permissible except when it's  
18 specifically forbidding by the guidelines.

19 THE COURT: The problem is you call it double  
20 counting. I'm not saying it's double counting. That's the  
21 point. The 2B1.1 guidelines don't include any enhancement or  
22 in the base offense level don't bake in or in the specific  
23 characteristics don't bake in the abuse of trust. I think  
24 it's not double counting. Listen, you can preserve your  
25 appeal on this. I just happen to disagree with your

1 application to this case to this guideline for the reasons I  
2 think that the Government articulated notwithstanding your  
3 argument about Broaderson. I just don't agree with that  
4 analysis. So I am going to apply the two-level enhancement  
5 under 3C for abuse of trust.

6 Obstruction of justice.

7 Now, it I believe is purely a factual issue or an  
8 evidentiary issue because Mr. Napout argues that there was  
9 insufficient evidence to establish that he intended to  
10 obstruct justice, and the Government acknowledges that the  
11 intent has to reach a level of willfulness, essentially, to  
12 obstruct the Government's investigation regarding the bribing  
13 schemes. This one, I think, is admittedly a close call but I  
14 do find that the evidence that was adduced at trial does  
15 establish willfulness, and that the Defendant intended to have  
16 his computer removed to obstruct the investigation.

17 The facts that I think are most salient on this are  
18 the fact that Mr. Napout signed a non-destruction order or  
19 agreement just a few months before the computer was removed.  
20 He specifically agreed that he would not destroy any  
21 information or evidence or data relating to the alleged  
22 co-conspirators in this case who are identified, and any other  
23 evidence that may relate to alleged bribes. The computer  
24 contained photographs of many of the individuals Mr. Napout  
25 was later charged with conspiring with in very celebratory

1 settings.

2           The Government acknowledges, obviously, the photos  
3 can be interpreted in many ways. But, certainly, the  
4 Government introduced those photos to corroborate the  
5 existence of a bribery scheme. So it certainly fell within  
6 the clear confines of the non-destruction order, but also it  
7 could be viewed as incriminating.

8           The other piece of evidence that came from the  
9 computer was the direct evidence about Mr. Napout's receipt of  
10 the in effect \$40,000 in bribe money to pay for the luxury  
11 apartment rental in Uruguay. And the Government used that  
12 evidence at truly to show the receipt of part of these bribes  
13 in kind rather than in cash. The circumstances surrounding  
14 the removal also indicate an intent to thwart the  
15 investigation because there was testimony from Mr. Sanabria  
16 who was one of Mr. Napout's assistants that he was told by the  
17 lawyers that were hired by CONMEBOL after the investigation  
18 began. And when it appeared that there might be further  
19 indictments of individuals including Mr. Napout, that the  
20 lawyer told Mr. Sanabria that the computer was going to be  
21 removed by the lawyers before any search was conducted. And  
22 the timing, obviously, preceded the search by just a short  
23 period of time.

24           The lawyer actually sneaked the computer out of the  
25 office under the cover of a jacket because there were security



1 cameras there and then a replacement, or dummy, computer was  
2 put on Mr. Napout's desk, so that when the search happened by  
3 the Paraguayan authorities it was represented that this was  
4 Mr. Napout's computer and, of course, to didn't have any of  
5 the potentially incriminating information on it.

6 It is part of a reasonable inference that the  
7 ordering of this removal by Mr. Napout was for the purpose of  
8 thwarting the investigation.

9 Now, the defense has argued that there was evidence  
10 Mr. Sanabria said he was told that the reason that Mr. Napout  
11 wanted the computer removed was because of pictures of his  
12 family on it and that he wanted to prevent those from making  
13 it into the public sphere. However, that reasoning falls  
14 apart because there were a myriad of ways he could have done  
15 that because he had a lot of advanced notice about the  
16 impending investigation reaching him months, in fact, and he  
17 could have simply had Mr. Sanabria, as Mr. Sanabria had done  
18 before, download the pictures of his family from the computer  
19 and removed them from the computer.

20 The defense argued that he could have easily  
21 destroyed the information if that was his intent to thwart the  
22 investigation. But I think the conflict of that, which the  
23 Government makes persuasive, which is that he had an alternate  
24 plan: Rather than destroying the photos that might  
25 incriminate him, he had a plan that if he was arrested that

1 the computer should be removed which is, in fact, what  
2 happened.

3 So I don't find -- and, actually, let me say there  
4 was a third option that if he was concerned about was the  
5 family photos, for example, he certainly could have left the  
6 computer where it was and simply made an application to the  
7 Government that those shouldn't be disclosed during the trial  
8 because they were totally irrelevant.

9 So the counter reasons that are offered by the  
10 defense really don't make any sense to me, and the  
11 circumstances under which the computer was taken and then it  
12 was never disclosed that the computer was removed point to,  
13 and support, the conclusion, certainly, by a preponderance  
14 that Mr. Napout was attempting to obstruct the investigation  
15 because of information on it that did connect him to the bribe  
16 scheme and the other conspirators.

17 Mr. Weinstein, did you want to be heard further on  
18 that?

19 MR. WEINSTEIN: Yes, Your Honor.

20 THE COURT: Go ahead.

21 MR. WEINSTEIN: I was thinking of a sports analogy  
22 that I'm 0 for 3, and this is a serious proceeding, and his  
23 life is on the line.

24 So with respect to the obstruction, there are a lot  
25 of points to be made. I appreciate your Honor said at least

1 it's a close call. For starters, I think some of the evidence  
2 that your Honor referred to I don't think there was any  
3 evidence that someone testified that they were going to remove  
4 a computer before a search. I understand that there  
5 ultimately was a search that happened some time after his  
6 arrest, but I don't think there was any evidence that someone  
7 was connecting a removal of a computer to a potential search  
8 warrant.

9           And the timeline here makes no sense on this theory.  
10 If Mr. Napout believed as of May 27, 2015, that there was  
11 incriminating information on that computer that was bad for  
12 him and wanted to removed, why did he let it sit there month  
13 after month while there was now a known worldwide  
14 investigation, lawyers in that very office mirror imaging the  
15 computers, collecting evidence, giving it over to the  
16 Government, and yet, he's letting it sit there and sit there  
17 and sit there. And it's not until -- even accepting that  
18 there was instruction, I'll get to that in a minute, but to do  
19 something when I'm arrested, the point is he's an obstructing  
20 an investigation the investigation is happening. It's no  
21 secret, it's happening in his office, lawyers are there,  
22 they're collecting data and he's letting it sit on the  
23 computer. There is no explanation for why he would allow that  
24 to just sit there month after month if he intended to obstruct  
25 the investigation that was going on around him.

1           THE COURT: But the counter reason, not the counter,  
2 the alternative reason of wanting to keep the family photos  
3 from being made public that similarly found that reasoning.  
4 Why not remove those when he knows there might be an  
5 investigation. He has actually been advised he's a target,  
6 right, and he signed a non-destruction letter. So you're  
7 right, he had -- but he certainly had every reason to believe  
8 his computer might at some point be seized.

9           MR. WEINSTEIN: As far as we know, the computer was  
10 actually imaged prior to this ever happening.

11           THE COURT: Here's what I can't get over. The  
12 extremity of having the computer removed. You don't do that  
13 if you're only concerned about having family photos disclosed.  
14 That is such -- it's a theft of a computer under secret  
15 circumstances in direct violation of a non-destruction order,  
16 and it's kept from the investigators thereafter. If, in fact,  
17 all he wanted to do was remove the family photos, then take  
18 your computer, remove your family photos, tell the Government  
19 you removed the family photos, show them to them, but don't  
20 take the entire computer and have it completely withheld and  
21 the fact that it's been removed can withheld from the  
22 investigators.

23           MR. WEINSTEIN: So a few things.

24           First of all, on whether there was -- I'll get to  
25 past this -- whether there was an instruction by Mr. Napout to

1 remove the computer. I think the evidence from Mr. Sanabria  
2 because he was told that Mr. Napout had expressed concern that  
3 if he was ever arrested, there are family photos and one where  
4 people are in bikinis on the beach on that computer. And we  
5 have heard testimony from many at the trial about safety  
6 concerns for people of that stature in that area of the world.  
7 That's the testimony now, whether Mr. Caseras says, I'll take  
8 care of it. Whether Mr. Caseras decided, rightly wrongly,  
9 foolishly, or whatever. The way of taking care of that would  
10 be to actually remove the computer, I don't dispute that  
11 that's not the smartest way to go about taking care of that.  
12 But that goes to whether Mr. Napout actually instructed anyone  
13 to do that, and whether the alternative that he should have  
14 potentially either tampered with the computer to take stuff  
15 off, should he have asked someone at the time, okay, so maybe  
16 he should have asked someone.

17 THE COURT: Let me stop you on that.

18 I already made a finding that he was involved in  
19 removal of the computer, I'm not going to revisit that.  
20 Again, you're preserving your argument, I understand.

21 As I understood your argument at this stage, it was  
22 more about whether the evidence was sufficient to show intent  
23 to obstruct the investigation.

24 MR. WEINSTEIN: It's more of that because I did  
25 understand that your Honor had made that other ruling and the

1 Government says we didn't argue whether he participated, we  
2 did, we put it in a footnote. But I didn't want to belabor it  
3 for that very reason in order to address what your Honor said.  
4 I think it's important to have made that argument. The  
5 question is still, Did he have the specific intent to obstruct  
6 an investigation. So let's go to, well, what is it? Putting  
7 aside that he let that same computer sit there and be imaged  
8 and available for lawyers for six months and if he's arrested.  
9 So if he's not arrested for another year, it's sitting there  
10 for another year even assuming that instruction. So this is  
11 not getting rid of evidence this is on the off chance some day  
12 I get arrested, it's sitting there for that investigation.

13 THE COURT: Isn't that critical that if I get  
14 arrested, meaning, this is now real, I'm going to get  
15 prosecuted, doesn't that make sense then that's when he  
16 chooses to have it removed.

17 MR. WEINSTEIN: No. He only gets arrested if the  
18 investigation with the evidence sitting in his office leads  
19 them to think that they have enough to charge him with.  
20 They're in the offices getting the evidence and he doesn't do  
21 anything to stop it from happening.

22 THE COURT: But the counter, again, the alternative  
23 argument, though, doesn't make any sense at all. So steal the  
24 computer because of the family photos?

25 MR. WEINSTEIN: Look, again, I disagree with the

1 premise.

2 THE COURT: So you're saying -- I understand.  
3 You're saying he left it there because he didn't intend for it  
4 to be removed. And ultimately, to dispute the conclusion that  
5 I reached already that he directed the attorney to remove it,  
6 but rather, the attorney did it on his own because Mr. Napout  
7 expressed concern about removing -- about the family photos.

8 MR. WEINSTEIN: Yes. Now, let me get past that part  
9 which still is we have to get to his specific intent, and  
10 okay, so what is on that computer? We'll get to the photos in  
11 a moment. Not a single document, not one document aside from  
12 the photos, I'll get there, not one document on that computer  
13 that the Government introduces at trial is incriminating  
14 evidence. So there was nothing --

15 THE COURT: What about the Uruguayan rental?

16 MR. WEINSTEIN: Well, there is only a photo. They  
17 had other evidence of that, I believe. We're talking about  
18 photos.

19 THE COURT: Is there also an e-mail or a wire  
20 transfer record or something that connected the money being  
21 sent on his behalf?

22 MS. MACE: Yes.

23 THE COURT: For the rental?

24 MS. MACE: As with each of the bribes to Mr. Napout,  
25 we had several pieces of evidence. So this is certainly

1     incriminating. It's evidence of a bribe on his own computer  
2     that he caused to have taken out of his office. There was  
3     other evidence that he received that same bribe, and so this  
4     was corroborating evidence. This was in the ledger, there was  
5     testimony from Mr. Peña.

6             THE COURT: Forget about that for a minute. In the  
7     computer itself, there was a photo of the apartment.

8             MS. MACE: Yes.

9             THE COURT: Wasn't there also something indicating  
10    that the money for the rental came from an outside source?

11            MS. MACE: That was separate evidence not on the  
12    computer. It was corroborating evidence, certainly  
13    incriminating. It's inaccurate to say that evidence of the  
14    receipt of the bribe on the computer is not incriminating.

15            THE COURT: I think we're quibbling over document  
16    versus photos.

17            MR. WEINSTEIN: Because I want to get there, I  
18    haven't finished.

19            Sticking with the document. So there is not a  
20    single document that even the Government says came from that  
21    computer that incriminated him, so now we get to photographs.  
22    So the issue is, in head is he thinking, "Oh, my God, there is  
23    photographs," and I'll get to the apartment, "there is  
24    photographs of me with these other officials at worldwide  
25    events that everybody knows about." Among, I think the trial



1 evidence was, among 90,000 photographs.

2           So we have to believe that that's -- what his  
3 thinking was, I'm certainly around the world for sports events  
4 with Marin looking like we're having a good time and that's  
5 if, God forbid, the Government gets that photo, I'm cooked.  
6 There's just no way that's what he was thinking.

7           When I first heard this obstruction argument on  
8 these photos, I had a problem grasping it, but I was trying to  
9 put it in some perspective. And having read now the 200-plus  
10 letters from many, many friends and family around the world, I  
11 sort understand these photos.

12           Everybody who encounters Mr. Napout, and we'll get  
13 to this in other factors, becomes his friend, feels like  
14 they're his friend and that's just how he is with people. I  
15 was going to show you photos of him and his workers where you  
16 wouldn't necessarily expect, Oh, he's with his workers in  
17 similar photographs where he's very chummy with people.  
18 That's not a guy that's thinking, oh, my God, everyone knows  
19 about. The relationships are entirely known, they're  
20 expected, and I've got to get rid of that computer. That  
21 makes zero sense. Otherwise, we have to be careful when we go  
22 to a Federal Bar Council retreat or any conference that there  
23 are judges and lawyers in chummy looking photographs and  
24 someone is going to thinking, Oh, my God if anyone ever finds  
25 that photograph it's clear I'm in a conspiracy.

1           The fact that you can after the fact craft an  
2 argument that they are relevant is not the issue. Do we  
3 really think that in his mind he was thinking that those  
4 photographs are like that, God forbid, the Government gets  
5 those that's a problem. There's just no way.

6           THE COURT: Well, I don't agree with that.  
7 Obviously, being chummy with the people that you're alleged to  
8 be in a bribery conspiracy could look incriminating. It could  
9 look innocent under some circumstances. But also, of course,  
10 it could look incriminating.

11           Again, what about the apartment?

12           MR. WEINSTEIN: So, again, all of these photographs,  
13 I've got to get rid of this computer because there is one  
14 photograph of an apartment on the computer. Now, look, again,  
15 I understand that ultimately they can tie together the  
16 relevance and I'm not saying he was --

17           THE COURT: Hang on. Look at it from his  
18 perspective. Ultimately, he knows that it came from bribe  
19 money that was sent to pay for the rental. So, again, we're  
20 talking about what you think, or what you argue, the evidence  
21 shows would motivate based on what's on the computer. And the  
22 question is if he knows there is a photograph of that rental  
23 that he knows such was the theory and the evidence at trial  
24 demonstrated was paid for by one of these media companies and  
25 was a bribe in effect or was part of the bribe, why not, why

1 wouldn't he be motivated to have that removed?

2 MR. WEINSTEIN: It's got no context or anything.  
3 It's a photo of an apartment.

4 THE COURT: In his mind, he knows what it is.

5 MR. WEINSTEIN: So he's thinking there is a -- there  
6 are 90,000 photographs on this thing, no bad documents.  
7 90,000 photographs, and there is a picture of an apartment.  
8 Yes, it's sitting there for them to take and I don't care.  
9 But what is going to happen, if I ever get arrested, forget  
10 removing this one photograph, if I ever get arrested, just  
11 take the whole computer because. If they find the photo of an  
12 apartment.

13 THE COURT: Let me stop you again. The fixation,  
14 though, with what's actually on the computer ignores the fact  
15 that Mr. Napout may well not have remembered what all was on  
16 his computer or what he may have received at some point or got  
17 deleted, or what could be retrieved from the hard drive, for  
18 example, if, in fact, someone got their hands on the computer.

19 So it doesn't -- he doesn't have to know perfectly  
20 what's on the computer and what ultimately came off the  
21 computer may not be dispositive. The question -- the facts  
22 for me that are the most compelling are the circumstances  
23 under which the computer was taken. It was after he signed a  
24 non-destruction order that he specifically signed saying he  
25 would not destroy any information that might relate to the

1 investigation or these individuals and they were specifically  
2 named and included some of the people in the photographs.

3 Okay?

4           So that's the precursor. He knowingly signed,  
5 voluntarily signed, an agreement that he wouldn't destroy any  
6 of this. So removing the computer in and of itself with those  
7 photos that you're saying he knew was on the computer of all  
8 of these alleged coconspirators in and of itself shows an  
9 intent to thwart the investigation. And then the  
10 circumstances, which literally under cover of dark, they're  
11 taken away, the whole computer. And nobody comes clean,  
12 including him, about the fact that this computer is replaced  
13 with a dummy.

14           It doesn't matter, ultimately, that he didn't know  
15 all of what was on the computer. The question is, did he do  
16 this for a bad purpose knowing that he wasn't supposed to do  
17 it. Clearly, he knew. You can't dispute that he didn't know  
18 he wasn't supposed to destroy this evidence by removing it.  
19 I'm calling it destroying.

20           MR. WEINSTEIN: Which it wasn't.

21           THE COURT: Keeping it -- okay. If you're going to  
22 say he thought that removing it from the investigators' search  
23 is not destroying it then I think we have a more fundamental  
24 problem. But, again, I'm looking at the totality of the  
25 circumstances the fact that he may or may not have known what

1 the 90,000 images are on it or what all the pieces of  
2 information were on it, to me, isn't the most compelling fact.

3 If anything, the large volume of materials could  
4 have inspired some paranoia or fear about what was actually on  
5 there that could be incriminating.

6 So that argument isn't going to convince me that  
7 ultimately what came out of it wasn't so much. Again, if  
8 someone is just wanting to protect their family photos there  
9 are many, many ways to do that that don't involve having your  
10 attorneys, or the attorneys for the organization, which are  
11 accused of taking -- of depriving of money go in and steal the  
12 computer. There is no other way to describe it with them  
13 stealing it. It's a CONMEBOL computer that was supposed to be  
14 in the office when the search took place.

15 Those circumstances don't add up to an innocent  
16 explanation. And again, you and I are disagreeing about the  
17 premise that he instructed them to do it, but that was the  
18 evidence that I heard and that's how I think I infer from that  
19 that's what I think it showed.

20 So I've heard your argument again, Mr. Weinstein,  
21 not to necessarily to say you're 0 for 4 for lack of trying.  
22 You're definitely swinging for the fences, to use another  
23 sports analogy, and hitting the wall but not making it over as  
24 far as I'm concerned.

25 Again, I respect your argument and it's -- these are

1 not as clear-cut issues as I've addressed before, but I  
2 disagree with you on the assessment of the evidence.

3 Now, why don't you stay here because we're going to  
4 talk leadership ine enhancement.

5 MS. MACE: May I say one thing so the record is  
6 clear on the obstruction. There is a representation that the  
7 computer was imaged before, that's false. As far as  
8 everything that was presented at trial, and everything that  
9 the Government knows, that did not happen. That was the  
10 single copy that was removed from the office and Mr. Sanabria  
11 testified that backups did not occur until 2017. I wanted to  
12 make sure there was no ambiguity on the record.

13 THE COURT: I think your argument was all that time  
14 it could have happened and he let the computer sit there.

15 MR. WEINSTEIN: As far as he knew, the lawyers were  
16 collecting the evidence.

17 THE COURT: Be careful on that because it sounds  
18 like the same lawyers we're talking about who were supposed to  
19 be representing CONMEBOL.

20 MR. WEINSTEIN: Outside U.S. law firm in there doing  
21 what they're supposed to be doing.

22 THE COURT: All right. Leadership enhancement.

23 I am inclined to impose this based on the evidence  
24 and I'll recite the evidence and you can respond  
25 Mr. Weinstein.

1 I know that you focus on the fact that Mr. Grondona  
2 was the leader of CONMEBOL and the undisputed leader in many  
3 ways of this bribery scheme, but I don't think that that  
4 precludes Mr. Napout also occupying a leadership role. And I  
5 think the evidence that supports that conclusion by a  
6 preponderance at least, which is summarized in the  
7 Government's submission, at Pages 38 to 41 includes the  
8 following.

9 The fact that Mr. Napout began cultivating a  
10 relationship with Mr. Burzaco and Mr. Grondona in 2010 after  
11 the Group of Six was formed. That, Mr. Napout openly worked  
12 toward gaining power of CONMEBOL as the president and that  
13 this was something he did discuss with Burzaco on a number of  
14 occasions. That, Burzaco testified that he told Napout to  
15 hold down his troops referring to the Group of Six and to keep  
16 them unified so that Mr. Napout could achieve his goal of  
17 becoming CONMEBOL's president was also in the record.

18 Eventually, of course, Mr. Napout became the  
19 president of CONMEBOL which certainly officially anointed him  
20 as leader of CONMEBOL. And the evidence showed put him in a  
21 position to negotiate about the bribes being received by the  
22 various soccer officials involved in the schemes, or at least,  
23 I should say, the two bribery schemes the Copa Libertadores  
24 and the Copa America.

25 And, in particular, Mr. Napout negotiated or at

1 least accepted what was deemed to be the presidential  
2 treatment once he became president of CONMEBOL in 2014 and  
3 started then receiving a 1.2 million per year bribe for Copa  
4 Libertadores and a \$3 million in addition bribe for Copa  
5 America and that is much more than anyone else.

6 So that evidence, which was produced at trial, to  
7 me, indicates that he did occupy a leadership role. Granted,  
8 it evolved over time. But the fact that he may have only  
9 occupied that definitively in 2014 doesn't, I don't think,  
10 undermines the applicability of the leadership enhancement.

11 Go ahead, Mr. Weinstein.

12 MR. WEINSTEIN: I say there's two buckets that your  
13 Honor described. One is the effort to become president. And  
14 the other I think is the testimony of Burzaco about the  
15 meeting that happened when he did become president.

16 The fact that he made efforts to become the  
17 president of CONMEBOL and ultimately became the president and  
18 the quotes that your Honor had of someone saying we need to  
19 hold down the troops and keep them unified are political  
20 issues. The leadership role is for being leader of the  
21 criminal activity, not just being the president of CONMEBOL.  
22 And the fact that there were efforts to become that leader to  
23 keep troops unified in that context I don't think gets him to  
24 a role of criminal activity.

25 THE COURT: Let me stop you.



1           If the criminal activity involves bribes in order to  
2     award contracts that are signed by that soccer organization,  
3     here CONMEBOL, don't those two end up aligning? Because as  
4     the president of CONMEBOL, he certainly had the power of  
5     persuasion to get some things to happen in CONMEBOL. And the  
6     purpose of the bribery scheme was to get CONMEBOL to agree to  
7     award media contracts to certain companies.

8           MR. WEINSTEIN: Well, with respect to the awarding  
9     of the contracts to certain companies, all that had already  
10    happened by the time he became president. So I guess to some  
11    extent theoretically if there was another one to come, but  
12    that all happened before he got into that role. And then what  
13    happens when he gets into that role is really what I think is,  
14    you know, either give a leadership role or not is hinging on  
15    this one meeting that Mr. Burzaco says happened in October of  
16    2014 where he sat down with Mr. Napout narrow and explained to  
17    him all the bribes that had been going on which, again, we  
18    think also undermines that argument that he actually knew  
19    about all these bribes before then but that issue is off the  
20    table now.

21           Look, this is a huge this is a four-point  
22    enhancement in the guidelines case that is quite high. That's  
23    the evidence to rely on. And, your Honor, at trial or  
24    post-trial, the defense gave, I think, sufficient evidence to  
25    cast doubt about that particular meeting. And it's an

1 important meeting because it's the meeting that they put the  
2 leadership role on his head. And that is it supposedly  
3 happened. And it's not, Oh, maybe he got the meeting wrong.  
4 He had very specific supposed details of a meeting that took  
5 place in Paraguay and who was there and how he flew there and  
6 there are documents that now undermine that.

7 THE COURT: I understand that.

8 MR. WEINSTEIN: And, look, even if they're  
9 definitive or not, they say they're suspect, I don't quite  
10 understand why. We haven't seen evidence that does place him  
11 there.

12 Now, given those documents, it certainly casts  
13 credibility issues on Mr. Burzaco at least as to that meeting,  
14 if not other issues. It's an important meeting for this  
15 purpose. And they say, well, so, you know, the records might  
16 not have shown him and the customs records might not have  
17 shown that he entered because he had testified that, you know,  
18 CONMEBOL officials get in through presidential treatment.

19 First of all, he's not a CONMEBOL official so it  
20 doesn't apply to him. He's talking about the officials. He  
21 is not a member of CONMEBOL, Mr. Burzaco. He couldn't have  
22 gotten into Paraguay any other way, and I don't think his  
23 testimony was they don't get officials entered into customs,  
24 you get to skip the lines.

25 So that's their come back to the evidence that was

1 presented after trial about whether that meeting actually took  
2 place and if it didn't take place, there is no evidence that  
3 Mr. Napout did the things that Mr. Burzaco said they did at  
4 that meeting.

5 THE COURT: Do you want to say anything else?

6 MR. WEINSTEIN: I think those are the main issues.

7 THE COURT: All right. Have a seat. Ms. Mace, do  
8 you want to respond to that?

9 MS. MACE: I'll note I don't think there is a need  
10 to respond to most of that.

11 In the beginning, the response to some of the  
12 quotations that your Honor referred to the defense is very  
13 dismissive of those, and I don't think that's appropriate to  
14 just say that when Burzaco told Mr. Napout to hold down your  
15 troops that was just dismissed as somehow political. The  
16 whole purpose of this relationship is for Mr. Burzaco to be  
17 able to hold on to those rights and hold down your troops for  
18 Torneos and the other bribe payers. So I don't think it's  
19 appropriate to undermine the significance of that type of  
20 evidence. So there is other examples of that we also put in  
21 our brief.

22 The other thing I think that the defense has been  
23 very dismissive of is the significance of Mr. Napout's role as  
24 president. And there's one case in particular we cited in our  
25 brief maybe we didn't call attention to it enough because it

1 is so relevant here. And that's United States v. Derigei, the  
2 Second Circuit in 1995.

3 Here, the Court focused on the role of an individual  
4 at the head of an organization that has been corrupted. And  
5 there, it was, I think, the Limousine and Taxi Commission of  
6 New York City and it was the head inspector who was being  
7 considered for his leadership role. And the Court said,  
8 "While the Defendant may not have been the scheme's inventor  
9 or originator, he was clearly one of its leaders. The Derigei  
10 Defendant was the highest-ranking authority at the inspection  
11 station and exercised control over it. Regardless of his  
12 exact role in the conspiracy, his place in the inspection  
13 station hierarchy, together with his participation in the  
14 conspiracy, necessarily made him a leader in the scheme.

15 The district court recognized that a corrupt  
16 executive who is seen to be corrupt by subordinates leads by  
17 example. The defendant's participation in the scheme allowed  
18 his subordinates to understand that bribe taking was an  
19 institutional practice and that they had high-ranking  
20 institutional protection for their jobs and their careers  
21 notwithstanding their corruption. The defendant's influence  
22 would tend in this way to erode the inhibitions and scruples  
23 of participating subordinates and to facilitate recruitment of  
24 the others."

25 So here that's really important because part of the

1 whole import of this case is the effects of the corruption and  
2 how far reaching it was. And to have someone at the head of  
3 CONMEBOL, the third CONMEBOL president to be indicted in this  
4 case, be taking bribes and making it known to others within  
5 CONMEBOL that that was okay and it was okay as an  
6 institutional way of proceeding made him a leader even apart  
7 from all the other evidence the defense is taking issue with.

8 THE COURT: Okay. I do find there is support for  
9 the leadership enhancement for the reasons that I said earlier  
10 and what the Government has just argued as well.

11 Mr. Napout certainly occupied a leadership role and  
12 sought to exercise that role. I think that was not only with  
13 respect to the official operations of CONMEBOL. But remember,  
14 with respect to keeping the bribery scheme successful and  
15 intact and also trying to maintain the secrecy of that bribery  
16 scheme.

17 All right. Lastly, let me address the forfeiture  
18 issue.

19 Defense has argued that the presentence report's  
20 statement that roughly 3.3 million should be awarded as  
21 forfeiture or should be subject to forfeiture, I should say,  
22 because this represents the amount of bribe money that  
23 Mr. Napout actually received. The evidence for that is based  
24 largely on the ledger that we've been referring to that was  
25 maintained by Mr. Peña and along with the ledger and

1 Mr. Peña's testimony there was testimony from an Ilario  
2 Rodriguez and Mr. Burzaco about the bribes that were paid to  
3 Mr. Napout both in cash and then in kind.

4 The testimony was roughly that the money was  
5 disbursed from Torneos and the Jinkeses took care of the money  
6 actually delivered to Mr. Napout. The Defendant contests the  
7 evidence, I think, for many of the same reasons that we  
8 discussed and says does not support a finding by a  
9 preponderance that Mr. Napout actually received any money.

10 Fair to say, Mr. Weinstein?

11 MR. WEINSTEIN: I mean, I would put some accent  
12 marks on it, but that is the general gist of it and I think if  
13 it's -- the gist is not a single witness, they had a lot of  
14 witnesses not just at trial but not called to trial, not a  
15 single person observed Mr. Napout take cash or anyone on his  
16 behalf take cash.

17 THE COURT: Yes.

18 MR. WEINSTEIN: Nobody. And if the reliance is on a  
19 ledger, just as an example, there is a -- in the Honda tab,  
20 which they say is the tab for the money he got. In 2014,  
21 there is a \$96,000 payment supposedly to Mr. Napout. Mr.  
22 Bedoya testified that in 2014 he got a payment of \$96,000 in  
23 2014 and that doesn't appear on the tab for Mr. Bedoya.  
24 Presumably, it's the same \$96,000 that they claim he got. It  
25 just is an example of undermining why the ledger mean he

1 necessarily got money and the Supreme Court has said unless  
2 the Defendant personally got money, he can't forfeit it.

3 THE COURT: Okay. Did you want to respond at all to  
4 what Ms. Mace said, specifically, about the \$96,000. Did you  
5 want to say anything about that?

6 MS. MACE: Your Honor, I recall there being  
7 testimony about that at trial and I don't remember it  
8 specifically, but I know it was addressed about minor  
9 inconsistencies and dates and so forth in the letter that  
10 Mr. Peña even noted that he made some errors in terms of minor  
11 things that has dates. But he testified that all of the money  
12 that is accounted for there he was directed to prepare to be  
13 delivered to Mr. Napout.

14 And the idea that the Government cannot prove its  
15 case unless it had Mariano Jinkis here is just false. The  
16 Government is able to present its evidence through other types  
17 of testimony and exhibits, and there is extensive  
18 corroboration on each of the payments.

19 I will note as one example, the bribes were paid in  
20 cash and there was testimony that Mr. Napout, and sometimes  
21 his driver, would go to Buenos Aires to pick that up. The  
22 Government obtained hotel records and flight records to show  
23 that he was actually in Buenos Aires on the dates which show  
24 in those letters to corroborate the fact that he received the  
25 money that Mr. Peña said he did.

1           And so, certainly, by a preponderance of the  
2 evidence, there is enough to support the full amount of the  
3 forfeiture noted in the government's brief.

4           THE COURT: All right. I will add to this,  
5 Mr. Weinstein, that what you point to is the dearth of  
6 evidence of any direct handoff of cash is in some ways further  
7 proof of the use of sophisticated means to disguise the  
8 payments or to conceal the payments, I should say.

9           The whole point of this scheme, and of Mr. Napout  
10 getting the money in cash, after it was converted from wire  
11 transfers through candistas, et cetera. And picking it up in  
12 hand, either through his driver or himself, was to be able to  
13 say later, No one can say I got a penny from this scheme. And  
14 that, and I know you're going to find it unsatisfying, but  
15 that is -- the absence of evidence is the product of a  
16 successful scheme to conceal payments. I mean, that's part of  
17 it.

18           Now, I'm not saying it's insufficient evidence by  
19 any stretch because linking together the testimony about the  
20 disbursements of money which those who are testifying about  
21 those disbursements had an interest in ensuring it got to the  
22 intended recipient was quite compelling and I heard it and I  
23 saw the ledger. There may have been, and I recall this as  
24 well, some discrepancies that Mr. Peña testified to. But the  
25 overall amount of roughly 3.3 million was attested to by



1 Mr. Peña. Granted, all he could say was he was instructed and  
2 did disburse it to the Jinkeses or some intermediary for  
3 purposes of being converted into cash and delivered. There  
4 was argument made at trial that that money easily could have  
5 been stolen by the Jinkeses for the reasons that you said  
6 before that they were untrustworthy individuals.

7           However, based on the evidence that I heard and  
8 based on the sort of implicit logic that the bribees are not  
9 going to remain silent and they're not getting their payments  
10 and there was no evidence that anyone ever complained about  
11 that. The logical conclusion was that the money reached the  
12 intended recipient, albeit through these very elaborate and  
13 concealed means for the purpose of keeping the bribery scheme  
14 secret.

15           Go ahead.

16           MR. WEINSTEIN: With respect to whether the fact  
17 it's kept secret gets you back to sophisticated concealment.

18           THE COURT: We'll leave that as is. We disagree.

19           MR. WEINSTEIN: Definitely disagree on that.

20           With respect to some of the things Ms. Mace said.  
21 First of all, the \$96,000 I raised wasn't one of the -- first  
22 of all, it's not a minor discrepancy. And secondly, it's not  
23 one of the things that he testified about at trial. We've  
24 reviewed it, it's become clear that their own cooperating  
25 witness testified that he got that money. Yet, on it's on the

1 tab that he said Mr. Napout got the money. It wasn't raised  
2 at trial, it didn't need to be because it's being raised now  
3 because the issue is before us now.

4 And whether or not -- how you get the cash to  
5 someone is concealed. The fact is there would still be  
6 witnesses that one witness for one of these bribes actually  
7 seeing Mr. Napout get money, or one witness for one bribe  
8 seeing his driver get the money. There wasn't one. Nobody  
9 testified to that.

10 And with respect to the driver, the only evidence  
11 about this driver picking up the money that was at trial was  
12 testimony by Mr. Chiriboga not that he had any knowledge of  
13 it. That his father told him, and not that his father had any  
14 knowledge of it, but his father was told by Mr. Jinkis that  
15 the driver went there and got money. It's like quadruple  
16 hearsay. By the way, it wasn't clear that he said that it was  
17 in furtherance of the conspiracy or after the arrests because  
18 he and his father were talking.

19 But putting aside the admissibility of it for trial  
20 that's long gone, that's the evidence of the driver having  
21 that role.

22 THE COURT: Well, let me say this. I think it's  
23 pretty clear that the jury heard the same argument you're  
24 making now and rejected that but I, too, find that by a  
25 preponderance to be sure that there is evidence sufficient to

1 establish that Mr. Napout received the intended bribes at  
2 least up to the point of his arrest because all the testimony  
3 from the witnesses who were involved in this scheme, and  
4 especially the payors, was that for it to work, and it did  
5 work, because the contracts were signed as agreed to by the  
6 bribers and the bribees, people had to get their money.

7           So you could accuse the Jinkises of being thieves  
8 but in this context, it wouldn't get them very far because,  
9 ultimately, their goal was to get contracts which they weren't  
10 going to get unless they delivered the bribes that were  
11 promised.

12           So the sheer force of logic of this overarching  
13 scheme that went on for years, obviously many years before the  
14 Defendant was involved, but continued for four or five years  
15 until his arrest while he was involved. It thrived or could  
16 only survive if people received the money. And, therefore,  
17 there was no evidence that he did not get the promised money  
18 as accounted for in the ledgers over the course of many years,  
19 and it was roughly 3.3 million. I will give you this, I will  
20 deduct the \$96,000 from the figure to the extent that there is  
21 perhaps not sufficient evidence of that particular payment  
22 being made. So that brings the figure down, and I'm going to  
23 ask one of my law clerks to figure that out. The original  
24 figure was 3 million --

25           Go ahead you want to be heard?

1 MS. MACE: Yes, your Honor. If you are going to  
2 make a contrary finding on this, then we would like to have an  
3 opportunity to present those ledgers to you again. I think,  
4 and I don't have to with me today, I wish I did. But I think  
5 the date discrepancy is in Mr. Bedoya's, it's the Flemick tab.  
6 It shows the --

7 THE COURT: Flemick, a car, F-l-e-m-i-c-k.

8 MS. MACE: And so it's on there. It is accounted to  
9 Mr. Bedoya, it's just there is a date error on that ledger.  
10 So we do dispute that. I don't know if it's worth it at this  
11 stage to present on it further, but we don't agree that  
12 there's a lack of evidence as to that \$96,000.

13 THE COURT: So the Government's argument is that 96  
14 was paid to Mr. Bedoya and accounted for in Mr. Bedoya's tab  
15 of the ledger, but also 96,000 was paid to Mr. Napout.

16 MS. MACE: They suggested it's missing from  
17 Mr. Bedoya's ledger. It's not there's an error in the date,  
18 there is no reason to doubt that each of the payments in the  
19 ledger for Mr. Napout went to Mr. Napout as Santiago Peña  
20 testified.

21 THE COURT: Is the date off by a few days or by a  
22 year?

23 MR. WEINSTEIN: As far as I understand, your Honor,  
24 there is no payment to Mr. Bedoya in his tab of \$96,000 for  
25 the year 2014. So that's a dramatic mistake, and I don't know

1 how you get it in the context of a ledger when you're in the  
2 wrong year.

3 MS. MACE: As I recall, it is off by exactly one  
4 year. And there are several instances in which there are  
5 errors like that in the ledgers overall. It's off a payment  
6 by one year. And so, otherwise he wouldn't.

7 So, in any event, the money does show there and it  
8 is consistent with Bedoya's testimony that he got the cash in  
9 a very similar way that Mr. Napout was getting cash. And that  
10 it was accounted for in the same way in his ledger, it's just  
11 that there was an error in the date.

12 But that doesn't undermine that Mr. Napout got the  
13 why full amount that was in his ledger. And they had the  
14 opportunity to cross-examine Mr. Peña about that and  
15 Mr. Bedoya and they developed that evidence, but they did not  
16 in the end undermine the fact that Mr. Peña testified that  
17 that full amount in the ledger under the Honda tab consequent  
18 do Mr. Napout.

19 THE COURT: So I am going to adopt the figure for  
20 forfeiture which is in the presentence report which is  
21 \$3,376,025.88. The discrepancy that's been pointed out by  
22 Mr. Weinstein appears to have been explained at trial and I  
23 shouldn't say it's a discrepancy, actually what was alleged to  
24 be a discrepancy was a discrepancy Mr. Bedoya's payments one  
25 year versus another, but no doubt that Mr. Bedoya did receive

1 the \$96,000 that was accounted for in the ledger, albeit in  
2 the wrong year, but it doesn't raise doubt as to whether or  
3 not Mr. Napout received \$96,000 at the same time that  
4 Mr. Bedoya was improperly or incorrectly documented as  
5 receiving a bribe with the same amount.

6 And, again, for the reasons I said before, I think  
7 the evidence was sufficient to show that the bribes actually  
8 reached Mr. Napout.

9 Mr. Weinstein, did you want to say anything further  
10 on forfeiture?

11 MR. WEINSTEIN: Last comment.

12 I think your Honor had mentioned that there was  
13 essentially a jury finding on this issue. The jury did not  
14 find anything about his receipt of bribes. They just had to  
15 find he participated in the charged conspiracy. And secondly  
16 what, they also found was they acquitted him of two counts of  
17 money laundering.

18 I understand the law is you can consider the conduct  
19 even though there is an acquittal, but we shouldn't ignore the  
20 result either. They found that for a reason.

21 THE COURT: That is a good point. The standard is  
22 different at trial. And for the money laundering to some  
23 extent, the jury would still have to find that he agreed to  
24 engage in conduct to conceal the source of the bribes or the  
25 fact of the bribes. But, nonetheless, the jury did acquit him

1 of that. But I can, and do, still find by a preponderance  
2 that he received the bribes based on the evidence that was  
3 presented at trial that I did hear and see.

4 So notwithstanding the jury's verdict and you are  
5 correct that a jury didn't have to make a finding of about  
6 husband actual receipt. I separately find based on a  
7 preponderance that the evidence establishes his receipt of the  
8 full amount accounted for in the ledger which is the figure  
9 that I mentioned a moment ago.

10 That addresses all of the objections to the  
11 presentence report that I'm aware of. Do folks need a  
12 five-minute break? I kept you for a while.

13 Take ten minutes. Please come back a little bit  
14 after 20 after 12:00.

15 (A recess in the proceedings was taken.)

16 COURTROOM DEPUTY: All rise.

17 THE COURT: Have a seat, everyone.

18 So as we go back on the record let me summarize.

19 MS. PIÑERA-VAZQUEZ: My client is not here yet.

20 (Defendant enters the courtroom at 12:23 p.m.)

21 THE COURT: Going back on the record now, let me  
22 summarize where we are.

23 As I said before, I have adopted the presentence  
24 report's guidelines calculation in full even after hearing the  
25 arguments of the defense which certainly have some merit. But

1 in the end, I am endorsing the presentence report's guideline  
2 calculation of an offense level of 43 which does correspond to  
3 a level of imprisonment a range, if you want to call it that,  
4 of life, however, cabined in by the 720-month statutory  
5 minimum.

6 As I said before, however, I am not going to start  
7 with that life guideline, and so, let me say this now in terms  
8 of sentencing factors, I do find that the guidelines, and I  
9 don't even think the Government disagrees with this, overstate  
10 the seriousness of the defendant's criminal conduct in this  
11 matter. And that is driven in large part because of the  
12 unusually broad nature of this conspiracy which has been  
13 discussed at length involve many, many conspirators over many  
14 years and involving large bribery amounts and that is what  
15 drove the guidelines range so high.

16 I don't think it would be appropriate at all to use  
17 that as a starting point. Rather, I've looked at what the  
18 Defendant would or what the range will be if the Defendant  
19 were held accountable for only 25 million which was the  
20 intended amount of bribes he was to receive. And also what  
21 the guideline range would have or would be if it was based on  
22 the amount of bribe money they actually received which was in  
23 the range of 3.3 million. And looking at those metrics, I  
24 think a range of about 135 to 262 months, and I recognize that  
25 that's not a guideline range, but that's a much broader range



1 is a more appropriate starting point for purposes of  
2 determining a sentence and is a more appropriate starting  
3 point when considering the other factors that relate to  
4 sentencing. So let me just start off by saying that.

5 Otherwise, are there other objections to the  
6 presentence report or addendum that I haven't addressed beside  
7 the guidelines from the Government?

8 (Continued on the next page.)  
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1 MS. MACE: No to that question, but if I may,  
2 Your Honor, just note one thing with regard to what you just  
3 said about the range that you're starting with. You  
4 indicated that the amount that the Defendant himself agreed  
5 to receive was \$25 million.

6 THE COURT: Uh-huh.

7 MS. MACE: And I just note that I believe --

8 THE COURT: I think it's 24.9.

9 MS. MACE: It should be 24.9 and I note that  
10 because 25 is a threshold amount under the guidelines and so  
11 to the extent that that is factoring into Your Honor's  
12 decision the difference makes --

13 THE COURT: That's actually a good point. In  
14 fact, I should have been clear. I used the range that  
15 corresponded to 24.9 which is a level enhancement of 20 for  
16 the range of 9.5 to 25 million.

17 MS. MACE: Okay. Thank you, Your Honor.

18 THE COURT: You are correct, that's what I did.

19 Any other objections from the defense to any part  
20 other part of the presentence report?

21 MS. PIÑERA-VAZQUEZ: No, Your Honor.

22 THE COURT: Okay.

23 All right. So I am adopting the presentence  
24 report and addendum in full.

25 Now let's turn to the sentencing factors. I

1 reviewed the voluminous submissions of both sides and I will  
2 certainly hear further from the defense about an appropriate  
3 sentence and sentencing factors.

4 MS. PIÑERA-VAZQUEZ: Okay. Thank you.

5 THE COURT: Go ahead.

6 MS. PIÑERA-VAZQUEZ: Okay. Thank you, Judge.

7 In preparing for the presentation today,  
8 Mr. Weinstein will be addressing the factors and not the  
9 technical factors. I gave a lot of thought about what  
10 Your Honor's duty was in this case and how difficult the  
11 task was to not have sort of a mechanical arithmetic guide  
12 to sentencing, and while Your Honor's got a status  
13 conference in six weeks and as the Court has pointed out is  
14 very familiar with the facts of the case, the offense  
15 conduct and what Mr. Napout was convicted of. But as it's  
16 stated in our memo the Court knows very little about aside  
17 from the letters is Mr. Napout's history, his background and  
18 his parents. That is something that we would like to  
19 address today and I beg your indulgence because I'm going to  
20 take a little bit of time, hopefully not a long as this  
21 morning. But there are certain things I would like to point  
22 out because it's very significant to Mr. Napout's lifestyle  
23 that the Court should take into consideration certain  
24 factors.

25 I would like to tell you that as defense

1 attorneys -- I don't know if Your Honor has ever been a  
2 defense attorney, but as defense attorneys, we rarely have a  
3 chance to get to know our client in a personal way, before  
4 we're engaged. That's because we meet our clients under  
5 really difficult circumstances and our focus is on  
6 representing the client against the charges and finding a  
7 way to resolve the issue.

8           So rarely do I really get to know the person. I  
9 know him or her in a troubled state but not who he was  
10 before. In my 25 years of practice both as a federal  
11 prosecutor and as a criminal defense attorney, Mr. Napout is  
12 different. I met him three years ago. And I got to know  
13 him and his family quite well. I went to Paraguay several  
14 times, I interviewed a lot of witnesses, I got to see his  
15 daily interaction with his family, with his friends. So we  
16 have a lot of long conversations about his past and probably  
17 mostly related to football and things like that. But I feel  
18 comfortable, I actually felt like -- I actually felt at one  
19 point walking through the gate they actually think that I'm  
20 a parent or sister or mother because we sort of have the  
21 same color. At one point I almost felt like an adopted  
22 family member. But I have to tell you, that it was only  
23 upon receiving those over 200 letters that I realized that I  
24 had only scraped the surface of who this man was. To say  
25 that those letters make an impact on me is to put it mildly,

1 in fact, I read those letters before going on vacation and  
2 stuff. And I read them, it took me, you know, probably four  
3 or five days because I had to make sure that the correct --  
4 the letters were correct, the translation. And I have to  
5 tell you I spent the entire vacation with my family thinking  
6 about Mr. Napout. Actually thinking how can I be like Juan.  
7 How can I be a better person how can I help others. Like  
8 everything -- everything it impacted me so much it was  
9 engrained into my daily existence. That hasn't happened,  
10 every, in my entire life.

11 So why? Because the letters represented a man  
12 that is so rare in our day today. A man who had the values  
13 and has the values of generosity, of compassion, of empathy,  
14 decency. Decency, something that we think is everybody is  
15 decent; no, a decent man. Now one of the things that I want  
16 to comment before I get into the substance of the letters is  
17 that we -- you may have got in the past letters that seem  
18 like they're form letters or edited by a lawyer and I think  
19 that you -- when you read these letters, hopefully you  
20 notice that they came in all sorts of forms, some were  
21 handwritten, different fonts. So this is sent from the  
22 individuals themselves and I think that it was really  
23 important also that you receive the message of how  
24 passionate people in Paraguay are about Juan. While some of  
25 the letters the Court may not have received as well as

1 others because certainly some of the letters that claim that  
2 the witnesses lied, they still believe in Juan's innocence,  
3 we thought it was very important that you receive the  
4 message unfiltered. So that's why some of the letters may  
5 not have been what you expected.

6 So going to the section on 3553 factors. The  
7 first and I'm not going to go through all the  
8 characteristics, all the factors because I think we're  
9 pretty detailed in our memo, I'm just going to highlight  
10 some factors that I would like the Court to take into  
11 consideration.

12 The first one, history and characteristics of  
13 Juan. Juan was born 60 years ago in Asunción, Paraguay to  
14 two, no doubt hardworking and successful parents,  
15 Miguel Angel and Teresa. He was blessed to be born in a  
16 family that was successful and had great economic power and  
17 wealth in Paraguay. Now I don't know if you've ever been to  
18 Paraguay, but Paraguay is a landlocked country in  
19 South America with a large indigenous population in the  
20 center of the country and really, Asunción, and another  
21 border city are where most of the business is at. So the  
22 opportunity in that company is limited business opportunity.  
23 Everything is education and business.

24 The Government in their memo characterized their  
25 argument of taking into account Mr. Napout's background as

1 if we just want the Court to take into consideration that he  
2 was born into what they define as great privilege.

3 THE COURT: Well, I think one of his friends said  
4 he hey was born into a golden cradle.

5 MS. PIÑERA-VAZQUEZ: Cradle of gold. Yes, that's  
6 right.

7 THE COURT: Okay.

8 MS. PIÑERA-VAZQUEZ: But the Government generally  
9 seems to mischaracterize argument as we just want you to  
10 give him less time because he was privileged and I just want  
11 to be clear because it said it at the first page and I can  
12 read directly from their memo where they basically state,  
13 and I'm reading from the Government's memo Page 1, where  
14 they say, By largely ignoring the seriousness of this crime  
15 and the need for deterrence and unique circumstances of this  
16 case Napout argues that -- Napout argues that substantial  
17 additional incarceration is not necessary, because among  
18 other things, the eight months that he spent in jail is  
19 sufficient to, quote, deter an individual with Juan's  
20 background. Meaning, of course, a man who has lived a life  
21 of extreme privilege. So I'm quoting from the Government's  
22 brief. We want to get clear because we think it's very  
23 important that the Court understands that we certainly are  
24 not arguing that you should give Juan any less time solely  
25 based on his type of position or because he was privileged.

1 He didn't choose to be born into privilege. He was blessed.  
2 What we would like for the Court to do is look at the  
3 choices he made with that privilege. I think that is what  
4 we outline in our memo not because he's privileged but what  
5 he chose do with that privilege.

6 So, Your Honor, I would like to just -- I know you  
7 received over 200 letters from friends, family, coworkers,  
8 employees, people he met through sports, community  
9 organizations and even government officials. So I just with  
10 your indulgence, I would like to highlight just a few which  
11 I think really go to the character of who Juan is and the  
12 way he led he life for 60 years because as the Government  
13 has said and this conspiracy that Juan for purposes of his  
14 sentencing, because obviously we disagree with the verdict  
15 started in 2010 so we're looking at a five-year period of  
16 his 60-year life.

17 So the first letter I would like to highlight,  
18 Your Honor, is his childhood friend Anibal Fischer.

19 THE COURT: Why don't you spell the first name.

20 MS. PIÑERA-VAZQUEZ: A-N-I-B-A-L, F-I-S-C-H-E-R.

21 So Anibal is a childhood friend of Juan's. He's  
22 known her for 55 years and why that's important is because  
23 we wanted to demonstrate to the Court that Juan's character  
24 for compassion and generosity didn't just come up five years  
25 ago, just didn't come up ten years ago, you know, because



1 that's very convenient if it happens in many cases.

2           Juan, since he was a child as expressed by Anibal  
3 Fischer, describes Juan as the child who was kind and  
4 charitable in his daily life, who always wanted to be  
5 surrounded by friends. A child who had no qualms when it  
6 came to helping others.

7           Now, describing a child, and what better example  
8 is there of that than his other friend, Artura, A-R-T-U-R-A;  
9 Avila, A-V-I-L-A; who describes a really specific example.  
10 And when I read it I actually passed it over the first time.  
11 I didn't pay much attention to it. And then when I went  
12 back and read the letters, it's such a simple, innocent  
13 gesture. He's in elementary school and he's with his  
14 friend, and Artura asks, What time is it? And Juan turns to  
15 Artura and says, Don't you have a watch? And Artura said,  
16 No. That day as they're walking home from school, they stop  
17 at Juan's house. Juan tells his friend, Wait outside. He  
18 runs into the house, grabs a watch and he hands it to his  
19 friend. I never asked for money. I never asked for -- this  
20 is not the act of a university student, not the act of an  
21 adult. It's an act of a kid, an innocent kid. He doesn't  
22 have a watch. I have many watches. I'll give him a watch.  
23 That's how Juan led his life. It was simple gesture, an act  
24 of kindness, but it demonstrates who Juan was at an early  
25 age.

1           Another friend, Roberto Vargas, Roberto Vargas who  
2 also has nobody Juan for many years since they all went to a  
3 private school, a Catholic private school in Paraguay. He  
4 explains how when his family was going through a really bad  
5 financial situation and his parents had to mortgage their  
6 house, how Juan -- he was going to have to leave school  
7 because he couldn't pay the tuition. Juan went to his  
8 father and said, My friend is going to have to leave the  
9 school. His father communicated with the family and paid  
10 off that debit. And all Juan said to his friend was, This  
11 is a gift for your friendship. And later on, that  
12 friendship continued, and they paid for a scholarship for  
13 Juan's friend, Roberto, to study in London, England.

14           These are individuals who wrote to you and said,  
15 He made difference in my life. There are many other  
16 friends, but I can't go through all of them. I would like  
17 to bring you a little bit closer to today's date, in 2010.  
18 His friend, Carlos Cabral, C-A-B-R-A-L; and Carlos Cabral  
19 describes how eight years ago, that's 2010, Judge, his wife  
20 was diagnosed with a brain tumor. He didn't have the money  
21 to pay for his wife's surgery, out of the blue, Juan called  
22 him up, and said, Don't worry about it. I'll take care of  
23 it. All I ask is one thing: Please don't tell anybody.  
24 And he didn't. For the last eight years, Mr. Cabral did not  
25 tell one soul, but he felt compelled to write the letter to

1 Your Honor and break that pact because it was important that  
2 the Court understand who Juan is and how he helped others.

3 Now, many of the letters submitted were related to  
4 individuals he met through sports, because as outlined in  
5 the letter, Juan's grandfather and father were big believers  
6 what sports could do to a community and they supported  
7 sports, not only soccer, but tennis, swimming, golf, track.  
8 They believed that sports bring communities together and  
9 help people move forward. So as his father did, Juan also  
10 helped people within sports and sports organizations. He  
11 did it not in a public way. He didn't name a stadium after  
12 himself. There's no basketball or baseball court that  
13 exists or a soccer stadium named after Napout. He did it  
14 quietly. He donated land where they constructed some fields  
15 so children could play right near the airport. He  
16 donated -- you heard from the letters that he donated many  
17 times, uniform, travel expenses, and help athletes in those  
18 expenses.

19 Now, he also helped people individually. Let me  
20 tell you about Leryn, L-E-R-Y-N; Franco, who met Juan as a  
21 child because her father worked for you -- worked for Juan.  
22 I'm sorry, he worked for Juan. And as a young girl, this  
23 when she was about seven years old, she had some --  
24 obviously Juan or someone else saw her athletic capability  
25 and she didn't have tennis shoes. So Juan gave her her

1 first pair of tennis shoes, paid for her tennis lessons,  
2 only asked that she not beat his daughters as she explained.  
3 But Ms. Franco was not a really good tennis player. But she  
4 did go on to be an Olympic athlete. She was in the Olympics  
5 in 2012, 2016 and 2018 as a javelin -- I want to get it  
6 right -- as a javelin thrower, and she is still a champion  
7 in Paraguay. And in that letter she writes, she says, If it  
8 would not have been for Juan's gesture of tennis shoes, I  
9 would not have pursued sports in my life. And today, she's  
10 actually one of the sport leaders in the country, and  
11 mentions how Juan also helped other individuals that she saw  
12 when she went to his house and his office. It wasn't just  
13 her.

14           There's another person which I have to mention,  
15 because he's currently the Minister of Sports in Paraguay,  
16 and his name is Victor Pecci, P-E-C-C-I. Mr. Pecci was a  
17 top international tennis player in the '80s, the only top  
18 tennis international player that come out of Paraguay who I  
19 believe played at Wimbledon and the French Open. I don't  
20 know if he played in the U.S. Open, but he certainly played  
21 international and was one of the top ten. He writes how if  
22 it wouldn't have been for Napout's family support and how  
23 they stood up for helping athletes in different disciplines,  
24 Paraguay wouldn't be on the map nationally and  
25 internationally.

1           In fact, I believe in one of letter, and I don't  
2 recall which one, they explained how Mr. Napout's father,  
3 Miguel Angel, actually was the first person in Paraguay to  
4 provide lights, night lights on the tennis courts. And he  
5 had had the opportunity as it states in this letter, to sit  
6 in many meetings with Mr. Napout and attest to his  
7 commitment to helping others.

8           Now, while Juan circled himself with people that  
9 were involved with sports and wanted to get ahead in that  
10 way or met people through sports, he didn't only help people  
11 in that arena or for that purpose. For example, I would  
12 like the mention Elbio Ramon, E-L-B-I-O, R-A-M-O-N. He  
13 met -- Mr. Ramon explains that he met Juan through APF in  
14 2007 when he was part of the organization. In 2011 he was  
15 involved in a very serious car accident, a car accident that  
16 left him in the ICU. Juan was in Miami. Somehow Juan heard  
17 that he was he was going to be taken out of ICU, because it  
18 was a public hospital, and he could afford a private  
19 institution. Juan flew to Paraguay, visited him in the  
20 hospital, made all the financial arrangements, and for  
21 that -- that's why he's here today.

22           I would like to read specifically from his letter,  
23 because what his writes is very emotional because towards  
24 the end of the letter Mr. Ramon says, and I quote "I can  
25 only add that for me, he..." -- meaning Juan -- "...made the

1 difference between life and death, the same life that will  
2 be judged before your instance [sic], and that if there was  
3 only one legal means that made it possible to exchange his  
4 life for mine, I would gladly lose my freedom in exchange  
5 for his because in the balance of justice, he gave me back  
6 my life and I would only be paying off a debit with my  
7 freedom."

8           That's powerful. I don't think I know of anybody  
9 that would write that for me. I mean, that's a powerful,  
10 powerful statement from somebody, that he would give up his  
11 freedom document because Juan gave him back his life.  
12 That's powerful.

13           One of the themes that ran through the letters  
14 was, there is no doubt that Juan was a big financial public  
15 person who is generous. And I think in two or three it  
16 said, they asked me, Well, Juan, why do you help people so  
17 much? And his response was, Because God gave me wealth and  
18 you give what you have. I'm not saying I'm quoting it  
19 exactly right, but... So what Juan had was money. And how  
20 he could help others was by helping them either with medical  
21 issues or education or when they had financial issues. So  
22 that's why Juan -- he didn't hoard the money. He didn't  
23 take lavish vacations and not help others. Yes, he did  
24 well. He worked hard. He lived well. But he had a  
25 responsibility that was engrained from his father and his

1 mother that he had to help others. It was his  
2 responsibility.

3 Now, it wasn't only money, though, that Juan used  
4 to help people. He also took the time to provide emotional  
5 support. And here I get to the letter that you received  
6 from Edmundo Pardes, P-A-R-D-E-S. And this one was another  
7 one that actually did make a big impact on me, and I didn't  
8 know that he was going to be sending you the video, Judge,  
9 so I hope you understand why he's so grateful. But  
10 Mr. Pardes in 2003 was involved in a car accident that left  
11 him quadriplegic. He was a friend of Juan's from school.  
12 But it's not like they hung out every day. It wasn't like  
13 they were related. You know, he was a friend. He writes in  
14 his letter and I submitted it to the Court, I have lots of  
15 desire to live, and Juan didn't provide any financial help  
16 or anything like that, and it wasn't until Juan showed up in  
17 the hospital one day and he startled Juan, and he writes --  
18 I am trying to capture, I guess, what Juan told him, and I  
19 would like to quote it for the Court. He said -- Juan Angel  
20 tells Danilo, D-A-N-I-L-O, "Danilo, I know this may be tough  
21 but I trust in you, in your strength, combative spirit and  
22 courage, in your intelligence and creativity, in your  
23 integrity. You still have a lot to give, perhaps in a  
24 somewhat different way. And do not forget you have a wonder  
25 family and friends to support you. Don't give up. And by

1 the way, anything you need to rebuild this, do not hesitate  
2 to ask." This one voice made the difference between life  
3 and death for Danilo Pardes. And Juan went on to visit him,  
4 as he writes, and support him at the hospital.

5 So it wasn't that Juan just, Oh, I got the money.  
6 Let me just give it away because it's really easy to just  
7 get money. No, Juan took the time, as reflected in many  
8 other letters, to do small kinds of kindness to him may have  
9 been just going to hospital or visit a sick friend, but to  
10 that friend as reflected in the letter, was a life-altering  
11 gift. It was for Edmundo and it was for Elbio. Again,  
12 those are powerful, powerful letter.

13 I wish I could read all the letters, but I -- I  
14 don't --

15 THE COURT: Don't worry. I have them.

16 MS. PIÑERA-VAZQUEZ: You have them. I hope that  
17 you read them.

18 THE COURT: Yes.

19 MS. PIÑERA-VAZQUEZ: I tried to point out the ones  
20 that would sort of give you a picture of Juan from when he  
21 was a child to today, not 30 years ago, not 40 years ago,  
22 but who he is today. Because even though as the Government  
23 portrayed these acts began in 2010, he continued to do acts  
24 of kindness until the day he was arrested, and he continues  
25 to do it today while he's at MDC, and I will get to that in



1 a second.

2 And the other cause is -- and there's just two  
3 causes that I would like to point out in the letters,  
4 because I think they're kind of odd. You know, everybody  
5 supports cancer and heart and lungs. You know, that's sort  
6 of the typical go-to, you know, charities. But there are  
7 two organizations that I actually found quite interesting.  
8 One was -- and I'm going to spell it because I can't even  
9 pronounce it -- Comedores, C-O-M-E-D-O-R-E-S; and then it's  
10 K-O apostrophe; E-J-U; Chacarita, C-H-A-C-A-R-I-T-A. This  
11 is a soup kitchen.

12 Now, this is a soup kitchen in one of the poorest  
13 neighborhoods in Chacarita, feeds approximately 200 children  
14 from the ages of one-year-old to 14 according to the letter.  
15 Juan has been supporting that organization, as the president  
16 wrote. But not only has he been supporting it because it  
17 doesn't receive any government funds -- this a  
18 wholly private -- only receives funds from private donors.  
19 He also explains, which I had no idea, that he also sponsors  
20 a lot of orphan children in the street. And I think what he  
21 meant by that, I don't he -- because he doesn't have any  
22 orphans living in his house or -- but what he meant by that  
23 is that he provides sustenance [sic] --

24 THE COURT: Sustenance.

25 MS. PIÑERA-VAZQUEZ: Sustenance, right.

1 THE COURT: Yes.

2 MS. PIÑERA-VAZQUEZ: Thank you. English is my  
3 second language.

4 As a result Miguel's -- as a result of Juan's  
5 generosity, these children have a place to live and  
6 education and food.

7 The other organization is an organization called  
8 Fundacion, F-U-N-D-A-C-I-O-N; Kuna; K-U-N-A. Now, this is a  
9 nonprofit organization that defends the human rights of  
10 women with a focus on women of limited resources. I  
11 actually went on the Internet -- you know, I had to make  
12 sure before we submitted the letter that these organizations  
13 existed and were valid. And if you go to the website, it's  
14 actually quite interesting. It's not so much -- maybe with  
15 the translation of the human rights -- but what it does is  
16 it provides shelter for abused women and children, which  
17 shows that Juan did not focus solely on only one type of  
18 charity. He was extremely broad and generous. He believed  
19 in women's causes. In fact, he appointed one of the first  
20 female heads of soccer to the organization. So Juan was not  
21 a person that discriminated on the basis of gender, race,  
22 religion, or socioeconomics for his generosity. He saw no  
23 distinction.

24 In addition to being generous and compassionate,  
25 as I've described him, Juan was a decent co-worker. He

1 started off -- some of the letters we received were like  
2 from people who started with Juan when he started at the  
3 business that was owned by his father, and they described  
4 how he worked from 6:00 in the morning. Now, he didn't walk  
5 into the business getting a high-paying, you know, corporate  
6 job. He went into the interior with co-workers and he  
7 learned the business from the bottom up. This is not -- his  
8 father was not a man that was going to give him handouts  
9 because he expected a lot from Juan. So Juan had worked and  
10 earned his way up through the company.

11 As he did, you heard from some of his co-workers  
12 that he was never -- he never said, Oh, I'm the boss's son.  
13 Never. He never used that arrogance. Never. He was kind  
14 and he was generous and he helped and volunteered for  
15 projects. And as he went on when his father died, and he  
16 was only 30 -- 36?

17 THE Defendant: Thirty-three.

18 MS. PIÑERA-VAZQUEZ: Thirty-three years old, which  
19 is young. I think it's young, 33. He didn't just walk in  
20 and say, Okay. I'm the boss now. I'm taking over. No. It  
21 took time to move up. But now he was in a higher position  
22 because his father passed away and he became what they said,  
23 their boss. Did he change the way he treated their  
24 co-workers? No. He continued, as the letters reflect, to  
25 respect them with dignity and never ever disrespect and

1 heard all their voices.

2 And by the way, I would just like to point out  
3 that the business that Juan took over from his dad and  
4 expanded with other families in Paraguay is one of the  
5 biggest employers in Asunción and provides jobs for hundreds  
6 of people. Now, Juan is no longer actively involved in the  
7 company and has long ago divested himself and gone on. His  
8 family is still involved. But the letters support how he  
9 actually treated the employees and how he actually provided  
10 jobs to the families.

11 Just briefly discuss his family, because I think  
12 you're going to hear from his wife a little bit later, the  
13 only person you're going to hear from, if the Court allows  
14 it. I just would like to point out that they're sitting  
15 here in the first bench, the immediately family: His wife,  
16 Karin; his son, Junior; his daughter, Paulina; daughter,  
17 Andrea; son-in-law, Juan; his other son-in-law, Macon  
18 [phonetic]; and Veronica.

19 And I'm sorry?

20 UNIDENTIFIED MALE SPEAKER: Fernando.

21 MS. PIÑERA-VAZQUEZ: Alejandro was the last word,  
22 right?

23 THE COURT: Fernando.

24 MS. PIÑERA-VAZQUEZ: And then you also have other  
25 family members right behind, in fact, about two or three

1 rows of support for Juan Angel.

2           Every day that we were in trial for six weeks, we  
3 all stayed at the Marriott down the street and we all walked  
4 over here together. And every day his wife and his four  
5 children and sometimes friends and family came. But they  
6 were here every day through thick and thin. How amazing  
7 because there were things that obviously they disagreed  
8 with, things they didn't know about their father, things  
9 that things that they couldn't believe what was said. But  
10 it was hard to sit here every day, but they didn't miss a  
11 day.

12           Why is that important? Why is it important that  
13 this entire group of people are here? Because I went to  
14 Catholic schools all my life, and my mother taught me  
15 something very important to add to that: You reap what you  
16 sow. And I was always told that, You reap what you sow.  
17 And I thought it was a story of the Bible, you know, in the  
18 field. I had no idea until I got older. And I can't tell  
19 you how important it is because it is demonstrated here  
20 today in real life. If Juan would not have been the man he  
21 was as a father and as a husband, if he didn't take the time  
22 to have those daily dinners with his family, to go to his  
23 daughters' swim meets, to push his son to play golf, to be  
24 there at the tennis lessons. If he didn't take that time,  
25 if he didn't sow those bonds when they were young, they

1 would not be here today, I submit to you. And you've been  
2 present at other sentences where there is not this type of  
3 support. And that's a testament to his character and who  
4 his is as a man and as a father.

5 He wasn't the type of father who just give his  
6 kids money and let them go off spend it and spend all the  
7 day, you know, traveling and spending time at work. No.  
8 Because they wouldn't be here. That's not created  
9 overnight. I know how hard it is, as I'm sure Your Honor  
10 does because I have children, and it's hard to be at that  
11 ballet recital. It's hard to be at that baseball game. But  
12 you do it and you lose your life for many year, and you hope  
13 in the end you gain it back and you have some free time.  
14 Juan worked and he was there for his family. You reap what  
15 you sow.

16 They have visited him at MDC. It's very hard.  
17 It's very hard to see their father who was a -- their hero,  
18 or as I think Paulina said in her letter, superhero. I  
19 haven't had a chance to recall -- when she thought her dad  
20 walked on water, was a superhero. And even through  
21 everything that's happened, she still thinks he's a  
22 superhero. I mean, I thank God I didn't have to go there to  
23 see her father like this, that raised you and go to MDC in  
24 that visiting room? It's a horrible situation, but they  
25 support their father and they went.

1           The theme in the letters, and I have to mention  
2 this because it also taught me a little bit about Juan's  
3 personal character. A lot of the letters from childhood to  
4 today describe Juan in very similar adjectives. And I'm  
5 just going go through a list. They describe him as being  
6 peaceful; collaborative; humble; simple; avoided conflict;  
7 respectful; listened to all views; friendly, not arrogant;  
8 treated everyone equally; selfless. These are traits of a  
9 decent man, a man who lived his life since he was a child  
10 until the day he was arrested being compassionate, generous,  
11 and valuing humanity. So in making an individualized  
12 assessment as to who Juan is, we are going to take all these  
13 letters and all these characteristics as far as his  
14 background and the character of who he is. That would  
15 address the first factor, Your Honor.

16           As far as one of the other factors, which is  
17 reflect -- that your sentence would reflect the seriousness  
18 of the offense and promote respect for the law. There's no  
19 doubt that the offenses for which Juan was convicted are  
20 serious. I don't think anybody in this courtroom would  
21 doubt that. I think what is important to gain from how Juan  
22 has shown the seriousness of those crimes and promote  
23 respect for the law has been -- for example, I would like to  
24 point out two. Prior to trial, Juan was on strict house  
25 arrest for about two years, and it varied, obviously. It

1 was 24/7 with private security guards, but it then went into  
2 a modified curfew and then a break at the end. But for two  
3 years, he was on strict -- he couldn't go to Paraguay. He  
4 couldn't go to Disney World with his grandchildren. He  
5 couldn't go to -- you know, he very limited, and whenever he  
6 left his apartment, he had to go with, basically, guards.  
7 And one of those people in charge of the security detail was  
8 a former FBI agent, Anthony Velasquez. Now, Mr. Velasquez  
9 wrote a letter. It was toward the end of our submission,  
10 and he explained one specific instance which I think  
11 demonstrates Juan's respect for the law.

12           Last year around this time -- was it around this  
13 time? Around this time we were hit with Hurricane Maria in  
14 south Florida. That was a devastating hurricane. Well,  
15 Juan's apartment was in an evacuation zone, and when you  
16 have an evacuation zone, it's not just, Hey, let me just  
17 hang out there until there is -- no, no. There's police  
18 and they take you out, if you know anything about  
19 hurricanes. So Juan was required -- it was a  
20 life-threatening situation -- he was required to leave. But  
21 Juan didn't just evacuate, taking advantage of the situation  
22 and say, Okay. I'm out of here. You know, There's an  
23 evacuation, I'm moving. Let me go to a bar or whatever. He  
24 didn't take advantage of that.

25           What he did was call Mr. Velasquez and he was



1   there with his son, Junior. He called Mr. Velasquez and  
2   waited until Mr. Velasquez got there, who was securing his  
3   own home, by the way. Mr. Velasquez got a call from  
4   Probation for an alternate location in South Miami, and then  
5   he didn't want to drive himself there because he didn't want  
6   Probation to think he was somehow going somewhere else. He  
7   waited for Mr. Velasquez, got to his apartment and he drove  
8   him all the way back to Miami to a secure location. Now,  
9   that demonstrates to me that Juan respects, not only laws,  
10   but regulations. And when he then had the opportunity, a  
11   perfectly good excuse to violate that, he doesn't.

12           And to this day, we filed -- I think a couple days  
13   ago, I filed the counselor's report from MDC. He's been at  
14   MDC for nine months. A model prisoner. He hasn't --  
15   evaluation, which I believe is for the month of June, as the  
16   evaluation points out, Juan has outstanding response to  
17   supervision and instruction. And I'm reading from the  
18   second page. He's outstanding and he makes a real effort to  
19   please the instructor; does exactly as he is told. More  
20   importantly, Juan is very hardworking, responsible, and  
21   works well with others. He is respectful and shows up  
22   early, clean and ready to work. He is always ready to  
23   volunteer and take the initiative.

24           I represent a lot of people in jail. I'll say  
25   most of them really come out in good shape. They go and

1 they work out every day. They hang out and watch TV, and,  
2 you know, fight with the other inmates. Rarely have I seen  
3 an inmate that goes, volunteers, does more than is expected  
4 of him, and gets a letter from his counselor that he helps  
5 others. But you know what? It all came together, of  
6 course, because that's who Juan is as reflected in the  
7 letters. He didn't change while he's at MDC with violent  
8 criminals and drug dealers. He didn't change. He still  
9 helping others. He works in the kitchen. He gives food.  
10 He helps other. I mean, that's -- this is from the  
11 counselor from the -- not someone that just met him -- from  
12 someone -- I mean, not from someone who's known him for  
13 years, but this is from someone who can attest to his  
14 current. So Juan hasn't changed. Even though he's been  
15 through hell and high water because it's been very hard and  
16 I've been with him to experience it, he hasn't change. In  
17 his heart he's still the person of helping other and always,  
18 always working hard.

19 I would like to address very briefly the  
20 unwarranted sentencing disparities as the Court should  
21 avoid. Simply stated, the Court has sentenced three people  
22 in this multiple-Defendant conspiracy. That's Mr. Takkas,  
23 who the Court has sentenced to 15 months; Mr. Trujillo, who  
24 the Court has sentenced to eight months; and then last week,  
25 Mr. Marin, who the court sentenced to 48 months.

1           Now, I won't get into Takkas and Trujillo because  
2 they pled guilty and it's a different situation. But  
3 Mr. Marin, who went to trial with Juan, I just remind the  
4 Court that he was convicted of seven counts. He was  
5 convicted of a third conspiracy, which is the Copa do  
6 Brasil; Mr. Napout was not convicted of. And he was also  
7 convicted on two money laundering counts. And as the Court  
8 knows, Juan was acquitted on both of those account counts.  
9 So to say that Mr. Marin was convicted of more acts and more  
10 charges, especially with the money laundering, more  
11 responsible, I think is a fair statement.

12           I think it's also important, certain things that  
13 are different between some these individuals. For example,  
14 you heard that many of these individuals who were taking  
15 bribes were also taking salaries from FIFA, CONMEBOL, and  
16 CONCACAF. Juan wasn't one of those. Juan never took a  
17 salary, and it's in the probation report. He never took a  
18 salary from APF, from CONMEBOL, or from FIFA. And we're not  
19 talking \$96,000. We're talking about \$1.5 million or more.  
20 So that's money that he walked away from and waived. It  
21 wasn't like it was sitting in a bag. He waived.

22           Yes, he got paid for being at hotels. I mean,  
23 that's part of your job. I think that's important to take  
24 into consideration because it sort of undercuts the greed  
25 argument the Government would like for the Court to go with,

1 which is that he committed these crimes for greed. If he  
2 was greedy -- and, of course, we disagree with the verdict.  
3 But for purposes of sentencing, it's those -- if he took  
4 those bribes for greed, then why on earth wouldn't he take a  
5 salary? I mean, it doesn't make sense. It doesn't -- the  
6 pieces don't fit.

7           You don't see during the trial any credit card  
8 receipts or lavish spending of Prada or Chanel. You didn't  
9 see trips to the Champs-Élysées. You didn't see any of the  
10 lavish spending that you saw with other defendants, because  
11 Juan is a simple man. His family is a simple family. Yes,  
12 they have money. Yes, they're successful, but they don't  
13 use that money to live a lifestyle of the rich and famous.  
14 On the contrary, they live a lifestyle helping others.

15           Supporting their community, he's not from here.  
16 He's from Paraguay. That's the community he mainly  
17 supports.

18           Collateral consequences, I think the Court  
19 is aware and we've written in the memo that Juan will be  
20 submitted to harsher incarceration because he is a  
21 deportable alien. He will -- and I submitted an affidavit  
22 by a prison expert. He's from the Justice Advocacy Group  
23 Joel [sic] Pikler, who used to work, actually, for the BOP.  
24 And he just lays out in their -- I'm not going to go into  
25 all of that. But not only will he be subjected to harsher

1 in terms of incarceration as far as location, but he also  
2 doesn't have access to those prerelease and integration  
3 programs to Americans who would, quite frankly, commit the  
4 same crime Juan was convicted of.

5 Another thing which is really important, and I  
6 know we stressed it in the memo, but this a lifelong  
7 collateral consequence that Juan's going to have as a result  
8 of this conviction, he will never be able to come back to  
9 this country. Never. This is a man who had come to the  
10 United States since he was young boy, has had a house here  
11 for the past -- a home for the past 40, 50 years; a man who  
12 loved this country so much that when he sold his apartment  
13 with his wife, he actually went to the embassy and paid  
14 taxes. I don't know what taxes he paid, but he went and  
15 paid taxes because he didn't want to have any problems with  
16 this country.

17 This is a man who as he sits at MDC when he is not  
18 working is reading the biography of George Washington and  
19 Alexander Hampton and the Mayflower -- the Mayflower, which  
20 I guess he has yet to read. But this is a man who the fact  
21 that he will never be able to step foot in this country  
22 again will have a significant consequence on him.

23 We also submitted under seal the medical issues.  
24 I don't think we need to go into them in the open record.  
25 We submitted a report and we request that you take that into

1 consideration, Your Honor. I don't know if you want to hear  
2 anything else about those.

3 So I come to the end, and what I gathered from  
4 reading the transcript of Trujillo and Takkas, and I was  
5 present for Mr. Marin's sentencing. And I come to  
6 deterrence, which I think the Court repeatedly mentioned is  
7 one of the factors that it's considering quite heavily.  
8 First off, let's talk about the specific deterrence, the  
9 need to provide specific deterrence and to protect the  
10 public from Mr. Napout, from Juan from committing further  
11 crimes. First of all, Your Honor, Juan will never again be  
12 part of FIFA, CONMEBOL, or any sporting organization as a  
13 result of this conviction. So as far as committing any  
14 crimes related to that, there is no opportunity. There is  
15 no reason that he would ever become involved again.

16 But more importantly, and respectfully, what he's  
17 undergone for the last three years, two years of being away  
18 from his country, 5,000 miles away, home confinement, nine  
19 months at MDC, and the effect that it's had on his  
20 professional and personal life is more than sufficient  
21 punishment and recognizes that he will never again commit  
22 those crimes.

23 As far as general deterrence, last week during  
24 Mr. Marin's sentencing I sat there, and the Court made a  
25 statement which I thought was very appropriate, The whole

1 world is watching. And it it's important that the Court  
2 send a message, but let's talk about who it's sending a  
3 message to, because the message, it's not to the drug  
4 dealers. It's not to the violent criminals. The message is  
5 to, let's say, FIFA, CONMEBOL, and other international  
6 sports organization and sports marketing executives, that's  
7 who the message is to because that's what this case was  
8 about. You're not going to deter a drug dealer when you  
9 impose a sentence on a white-color criminal. And I think  
10 it's fair to say that any person in a position where -- that  
11 Mr. Juan sits in today, a high-level executive out there in  
12 FIFA today, or the new player in CONMEBOL, what they see  
13 Mr. Napout and others go through in the last three years,  
14 everything they've lost, their freedom, their liberty, it's  
15 quite a significant impact. Three, four, five years of a  
16 loss of freedom for a first-time offender is a strong,  
17 strong message.

18 Now, while we agree with the Court that one of the  
19 purposes of sentencing is to send a message, that we are a  
20 nation of laws, which is, I guess, the message the Court  
21 says it needs to send, if you break our laws, there are  
22 consequences. And we're going investigate and we're going  
23 to go after you and there will be consequences. That's a  
24 very important message. We don't disagree with that. But  
25 there is an equally important message that this Court has

1 the opportunity to make, and that's that we are a country of  
2 humanity; a country who believes in humanity. In our  
3 divided country today, the values that are derived are  
4 compassion, decency, and respect for the law. And by  
5 sending a message to the world that we are a nation of laws  
6 and a nation that believes in humanity, the Court is sending  
7 a very strong message.

8 And please forgive me, but I'm going to read  
9 something from Senator McCain's book, God bless his soul,  
10 and the book is *Character of Destiny*. And because he is an  
11 American hero and a man who stood for all the values that we  
12 so lack today, he writes in his book, and it's book about  
13 character and I quote from the first page in the  
14 introduction: "It is your character and your character  
15 alone that will make your life happy or unhappy. That is  
16 all that really passes for destiny. And you choose it. No  
17 one else can give it to you or deny it to you. No rival can  
18 steal it from you, and no friend can give it to you. Others  
19 can engage you to make the right choices or discourage you,  
20 but you choose."

21 Juan could not choose the family that he was born  
22 in, but he could choose the way he led his life and the  
23 way -- and what he did with the money he was born with and  
24 the success he obtained. He made a choice. He made a  
25 choice reflected in the letters submitted, a choice of being



1 generous, a choice of helping others, a choice of treating  
2 everybody with respect.

3           Now I'm sure the Government will get up here and  
4 say, Yeah, he also made a choice. He chose to commit bad  
5 acts in 2010 for five years. That's a logical  
6 counterargument. But even accepting that verdict, the  
7 verdict for purposes of sentencing and accepting that  
8 argument, one mistake that lasted years, according to the  
9 verdict, let's say five years or that time frame, cannot  
10 erase a lifetime of good acts in helping others. Because  
11 even Senator McCain in his farewell letter that we heard I  
12 think yesterday or the day before, said, I have tried to  
13 serve my country honorably. I have made mistakes, but I  
14 hope my love for America will be weighed favorable against  
15 them.

16           Senator McCain was a man who was flawed. He  
17 recognized he was flawed, and every day he was trying to be  
18 a better person. And I'm not saying Juan is Senator McCain,  
19 Judge. Please don't get me wrong. I'm just saying that  
20 because Senator McCain represented those values that are so  
21 important in our society and treasured them, Juan also  
22 embodied the values of selflessness, of honesty, of helping  
23 others, of generosity from the day he was born. So like I  
24 said before, this Court has the rare opportunity at this  
25 time in our divided country to send a message, not only to

1 the world, but to our nation that if God forbid any of us  
2 finds ourselves under Juan's situation in his darkest hour,  
3 that what you did in life, how you held yourself out, how  
4 you treated others with decency, respect, compassion  
5 generosity, equally, that that matters. And that is going  
6 to be taken into consideration by the Court when imposing  
7 sentence, because otherwise, we're only a nation of laws and  
8 there really is no need for a judge. We just impose  
9 sentence, and that's it.

10 So Your Honor, thank you for the time. I'm sorry  
11 if I took a little bit too much time. I think it's  
12 important that the Court understand that even makes  
13 mistakes, and the most important thing is the way you've led  
14 your life, and I hope the Court will take that into  
15 consideration in imposing a sentence that is sufficient, but  
16 not greater than necessary to achieve the goal of  
17 sentencing.

18 THE COURT: Thank you, Ms. Piñera-Vazquez.

19 MS. PIÑERA-VAZQUEZ: Thank you, Your Honor.

20 THE COURT: I'll hear from the Government.

21 MS. MACE: Thank you, Your Honor.

22 The Government, as the Court is already aware, is  
23 respectfully requesting that the Court impose a sentence of  
24 not less than 20 years. We recognize that that is a very  
25 substantial sentence and it's much longer than the other

1 sentences that have been imposed in this case so far, and so  
2 we certainly have considered those other sentences very  
3 carefully in arriving at our position that we would take  
4 today before the Court. We don't make this request lightly,  
5 but was do submitted that based on everything that is before  
6 the Court through trial, through the presentations leading  
7 up to today, everything makes it clear that a sentence of at  
8 least 20 years is not only warranted, but it is necessary in  
9 this case to achieve the goals of sentencing.

10           The Government takes this position because every  
11 one of the factors under 3553(a) counsels in favor of a  
12 lengthy sentence and it distinguished Napout, Mr. Napout  
13 from the other defendants that have been sentenced already.

14           First as to the nature and circumstances of the  
15 offense. I know the Court is very familiar with the  
16 evidence in this case and very familiar with the widespread  
17 corruption in organized soccer. I won't spend time  
18 discussing the gravity of the racketeering conspiracy and  
19 the crimes that Mr. Napout committed. And I won't focus  
20 either on the toll it has taken on the sport. I think the  
21 Court is very aware of that. But instead, I want to focus  
22 just for a moment on Mr. Napout's own conduct. Where  
23 Defendants Marin, Trujillo ^ Costas Takkas, and others were  
24 cavalier about their conduct sometimes and in some instances  
25 didn't even bother to keep track of all the bribes that they

1 were receiving, Mr. Napout in contrast was having  
2 calculating. He understood the power structure and the  
3 corruption in South American soccer and in world soccer, and  
4 he maneuvered in that position and he positioned himself to  
5 be at the center of that immense power. He succeeded in  
6 banding together a group of presidents, six presidents from  
7 smaller countries in South America. That became known as  
8 the Group of Six, as Your Honor is aware. It made up a  
9 majority of CONMEBOL's ten member at the time.

10 But the Group of Six did not use this opportunity  
11 to counterbalance the existing power structure. Mr. Napout  
12 drew the powerful Julio Grondona into his new center of  
13 power and into this new sphere. As I mentioned earlier  
14 today, after the Group of Six was formed, ^ Julio Grondona  
15 recognized the power there, and he said, If you are six,  
16 then with me, that makes seven. And Mr. Napout ensured that  
17 that was so over time. He visited Buenos Aries many times  
18 and met with Mr. Burzaco and ^ Julio Grondona, and he  
19 nurtured that relationship with Grondona.

20 Napout recognized the corruption in CONMEBOL, and  
21 according to him, he sought power in order to make a  
22 positive change. As stated in his sentencing submission,  
23 he, quote, "did not enter sports to make money. He had more  
24 than enough. But rather his goal was to improve the  
25 conditions for others." If that was truly his goal, then he

1 abandoned it at the first opportunity.

2 No later than 2010, shortly after he came into  
3 his -- or a few years after he came into his position as the  
4 APF president and shortly after the Group of Six was formed,  
5 and although he had more than enough money, he jumped into  
6 this arrangement with Grondona and the others and he started  
7 taking bribes. As soon as he had a chance to make a  
8 difference and he recognized that a difference was needed,  
9 he throw that chance away and he joined in with the others  
10 who were already involved in corruption. He did exactly  
11 what the old guard had done before him.

12 But unlike some others, Mr. Napout understood the  
13 personal risk of taking bribes, and that became clear  
14 through the evidence at trial, and he was very calculated in  
15 his efforts to protect himself and to avoid getting caught.  
16 He took bribes in cash, for the most part, over \$3 million  
17 in more than 25 installments over five years. That's been  
18 referred to making as making one mistake in his life. This  
19 is not making one mistake. Over the period of five years,  
20 he calculated a way to receive this money and try to hide it  
21 from law enforcement.

22 He met only with Mariano Jinkis to pick up the  
23 cash in the hotel rooms as we have described earlier today  
24 in Buenos Aries. And at one point, he sent Luis Bedoya, one  
25 of his co-conspirators to speak with Mariano Jinkis about

1 whether Full Play was being careful enough. And Mariano  
2 assured him that the officials' names were not associated  
3 with the payments and could not be traced. That's reflected  
4 in the ledger itself, and we referred to this earlier today  
5 that in the earlier years the ledger from Mr. Napout refers  
6 to JAN, Juan Angel Napout. And then later, ^ the entries  
7 were changed to refer to refer to Honda, Benz, Fiat, VW,  
8 Peugeot, Smart, Toyota. Using these codes names and these  
9 types of steps to evade detection by law enforcement helped  
10 Mr. Napout and the other corrupt officials maintain their  
11 positions by continuing to corrupt the enterprises they were  
12 supposed to serve.

13 He took bribes frequently but carefully over the  
14 span of those five years until he got caught. And through  
15 this time he held himself out as a reformer and he lied. He  
16 lied to FIFA. He lied to CONMEBOL. He lied to the APF.  
17 He was stealing money this entire time. And there has been  
18 a lot of talk about his generosity today, and we do not  
19 doubt that that has been a part of his life and there have  
20 been many letters that were submitted to the Court that show  
21 that in his personal life he demonstrated generosity and  
22 cared for people in his personal life. But that money that  
23 he stole, it could have been used to go to soccer  
24 development, to developing youth soccer and soccer for  
25 women, to build stadiums that were needed, and he took it

1 for himself.

2           Next, I want to just talk for a moment about the  
3 need to promote respect for the law and to protect the  
4 public. Shortly after the first indictment, which came out  
5 in May 2015, Mr. Napout was informed that he was a target of  
6 the investigation. That was in June 2015. Warnings were  
7 not commonly given to targets. But he did not step aside.  
8 He did not allow new, uncorrupted officials to take that  
9 position and actually begin the reform that was needed. He  
10 held tightly to power and he even orchestrated an  
11 obstruction of justice that we have discussed here today.  
12 This conduct at a time when he knew that he was under  
13 investigation and refused to allow that needed reform to  
14 take place, demonstrates the need to promote the respect for  
15 the law and to protect the public.

16           As he said again and again in his brief, that  
17 today he did not need the money; and yet, we never heard any  
18 indication of remorse or even regret that this is how he  
19 conducted himself.

20           With a 20-year sentence when he is released he  
21 will be the age of other co-conspirators when they even  
22 entered the conspiracy. Mr. Marin was 79, and Mr. Napout  
23 would be 80. And the suggestion that there's no need to  
24 protect the public against Mr. Napout, I think, is false.

25           Some of the letters that were submitted

1 demonstrate, I think in Ms. Piñera's words, that people in  
2 Paraguay are passionate about Juan. He will be given  
3 opportunity, there are even letters from the soccer clubs  
4 that demonstrate that he will be welcomed back. And if he  
5 is let out earlier and given a shorter sentence, he will be  
6 able to return and excerpt influence there.

7           Next, as the Court has already noted in other  
8 sentencings in here, there's a strong need for general  
9 deterrence.

10           Sadly, this case has shown that over many years  
11 one corrupt official has been replaced with another time  
12 after time after time. What we have seen is that over time,  
13 corruption becomes engrained and people shrug and say,  
14 That's just the way things are, especially when those  
15 committing the crimes are so powerful and it seems  
16 impossible that they could be stopped or that things could  
17 be any different. Mr. Napout and the other Defendants want  
18 to dispute whether their contact was harmful, and frankly,  
19 we think that's nonsense. The acceptance of corruption over  
20 here, even in the face of scandal and revealing that others  
21 are taking bribes, if nothing else, that acceptance of a  
22 corrupt way of proceeding is how soccer has been harmed.

23           Although there are many who have shrugged and said  
24 that, That's just the way things are, we submit that the  
25 Court has an opportunity to say, That's not the way things



1 should be, and that's not the way things have to be.

2 I think it's worth pausing for just a moment to  
3 take stock of where we stand today. Three successive  
4 CONCACAF presidents have been charged. One is fighting  
5 extradition and two have pled guilty.

6 (Continued on the next page.)  
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1 (In open court; 1:31 p.m.)

2 MS. MACE: The successive presidents of CONMEBOL  
3 have been charged. Two have fought extradition and one,  
4 Mr. Napout, was found guilty following trial. And yet, no one  
5 is really surprised by that.

6 As in the Derigei case, Mr. Napout was at the top of  
7 soccer for years, was the president of one of the most  
8 powerful soccer organizations in the world. He led by example  
9 at CONMEBOL and at FIFA, and his participation in the criminal  
10 schemes led his colleagues and his subordinates to understand  
11 that bribe taking was a common practice and would not be  
12 prevented or policed.

13 What is remarkable is that this official, former  
14 official, who enjoyed extraordinary wealth and power that made  
15 him untouchable for many years. It is extraordinary that a  
16 jury of 12 regular people from Brooklyn, New York could hold  
17 him to account and call this what it is: It's wrong, it's a  
18 crime, and he engaged in it for years. The bribes have been  
19 tolerated for years, but this is the chance to make clear that  
20 it shouldn't be that way and it doesn't have to be that way.

21 Through scandal after scandal and successive waves  
22 waves of arrests, one thing has been clear that the corrupt  
23 hold on tightly to their power. They are not easily persuaded  
24 to give up their positions or change their conduct and a  
25 lengthy sentence here is necessary to persuade them of that.

1 With defendants Takkas and Trujillo, the conduct and the bribe  
2 amounts were quite small in comparison to Mr. Napout's  
3 conduct, and with Defendant Marin the Court noted that it was  
4 lenient because of his age and although that was a proper  
5 consideration. In Mr. Marin's case, it does not apply here.

6 We respectfully submit that this is not the time for  
7 unwarranted leniency that will send the wrong message. For  
8 all the reasons cited in our brief today, and our argument  
9 today, we urge the Court to impose a sentence of no less than  
10 20 years because we submit that's what is necessary to  
11 accomplish the goals of sentencing here.

12 THE COURT: Thank you, Ms. Mace.

13 Let me ask. I know that you've said,  
14 Ms. Piñera-Vazquez, that the wife of Mr. Napout would like to  
15 say something.

16 MS. PIÑERA-VAZQUEZ: Yes, Mr. Napout has a brief --

17 THE COURT: Let's hear from the wife first. Maybe  
18 take your seat or give her microphone, the portable, and she  
19 can use that. That's fine.

20 (A brief pause in the proceedings was held.)

21 THE COURT: Also, after Mrs. Napout is done, I'm  
22 going to ask the Government if there are any victims that  
23 would like to be heard. You'll let me know.

24 MRS. NAPOUT: Hello.

25 THE COURT: Go ahead.

1 MRS. NAPOUT: Good afternoon, your Honor.

2 First of all, I would like to thank your Honor for  
3 allowing me the opportunity to address the Court. Please  
4 forgive me for reading, but this is such a critical day in the  
5 life of our family that I want to make sure that I say  
6 everything I would like to say. I want to apologize up front  
7 if I make a mistake or break down. Please understand that  
8 public speaking is not something I'm comfortable with.

9 It has not been easy sitting here today listening to  
10 some of the things that were said. These last 32 months were  
11 very hard and extremely difficult for Juan and for the whole  
12 family, especially for Juan's 86-year-old mother. The pain we  
13 are experiencing will be seared in our memory forever.

14 Juan and I have been married for over 33 years and  
15 have a beautiful family of four children, two sons-in-law, and  
16 four grandchildren. We have always lived in Paraguay, our  
17 home country.

18 Family has always been the most important thing in  
19 our lives although Juan worked long hours, he always made  
20 family a priority and made sure we had dinner every night all  
21 together. It was important for him to spend quality time with  
22 our children. He would always support and give them.

23 Your Honor, one of the qualities that I love most  
24 about my husband, and there are many, is his complete lack of  
25 selfishness. Juan is a generous and compassionate man. Since

1 I met him, I never saw him once turn away anyone in need. So  
2 many of his friends and employees approached both of us under  
3 difficult circumstances asking for help for them or for their  
4 relatives and Juan never even hesitated. He always told me  
5 that we were blessed with our family, health, and work and  
6 that it was our responsibility to help others.

7 I don't want to take up too much of your time, but I  
8 would like to give one personal example of how he impacted by  
9 family.

10 I come from a family of three siblings, all of us  
11 live in Paraguay. 28 years ago, in 1990, my brother and his  
12 wife, Maristela, were blessed with triplets. Sadly, one of  
13 the triplets, my nephew Robert, was born with a  
14 life-threatening heart defect or he would die.

15 At the time, the medical resources in our country,  
16 Paraguay, were not as advanced as the ones in the  
17 United States or other more advanced countries.

18 Unfortunately, my brother did not have the resources  
19 to take little Robert to a hospital with the appropriate  
20 technology and was prepared to have the surgery done in a  
21 clinic in Paraguay. When I explained the situation to Juan,  
22 he stepped in, did all the research available at the time, and  
23 took charge of helping my brother's family calling the best  
24 doctors and covering all the expenses necessary to take my  
25 nephew to Sao Paulo, Brazil where doctors with advanced

1 training to conduct this particular operation did their best  
2 work.

3 As a direct result of Juan's help, my nephew  
4 survived. Today, he works as a pilot for a commercial  
5 airline. Like my brother's experience with Juan Angel there  
6 are hundreds of others. I think I can say with complete  
7 honesty that Juan made an impact on people's lives on a daily  
8 basis.

9 Now, please don't get me wrong, my husband is not  
10 perfect, but then again who among us is. But with all his  
11 flaws and strengths, he's a decent and generous man who  
12 treated everyone equally and never refused to help others in  
13 need.

14 I must urge your Honor to use your wisdom to balance  
15 everything that has been exposed here from the trial against  
16 the real and true life of my husband and his actions prior to  
17 this trial. It has been shown in more than 200 letters that  
18 tell about the more than 50 years of Juan angel's life and his  
19 actions.

20 He always been a hard-working and well-prepared man.  
21 He studied hard in his youth and prepared to succeed in life.  
22 He worked more than 12 hours on a daily basis, dedicated his  
23 entire life to family and friends. Giving back to society on  
24 what God gave him the blessing of having a great family and to  
25 health and work. He never had one violent incident in his

1 entire life. On the contrary, he always looked for the  
2 peaceful solution. Though, I know Juan has learned much  
3 during his time in prison, it has been hard to see him like  
4 this but our support for him will never end.

5 I have no doubt that when he returns to Paraguay,  
6 Juan will continue his path of helping others. I'm sure that  
7 our community will benefit much more having him back  
8 dedicating his time and energy left at his age and helping  
9 others.

10 I humbly ask your Honor that you take into  
11 consideration Juan's good character and good deeds when  
12 imposing sentence and give his mother, our children,  
13 especially our grandchildren, the opportunity to have their  
14 son, father, and grandfather back again in their lives. We  
15 love him and need him back in Paraguay with our family and  
16 friends.

17 Please, your Honor, reach deep into your heart,  
18 balance my husband's life this morning and have mercy in  
19 imposing a sentence that will return him home soon. Thank  
20 you.

21 THE COURT: Thank you.

22 Let me turn to the Government for a minute. Are  
23 there any victims that you are aware of that want to make a  
24 statement at this time or representatives of the victims.

25 MS. MACE: I understand that there are

1 representatives of at least three victims here: FIFA,  
2 CONMEBOL, and CONCACAF. Based on my prior discussions, they  
3 don't wish to be heard in connection with the restitution.  
4 Let me verify it appears that that's true.

5 THE COURT: Thank you very much. I'll hear now from  
6 Mr. Napout.

7 You, sir, have the right to make a statement at this  
8 time. Would you like to say something?

9 Be mindful of using the microphone.

10 THE Defendant: Thank you very much, your Honor. I  
11 will be very brief. I think that you already heard enough of  
12 all the legal points and I just want to take the opportunity  
13 to thank my family and thank the friends who have come here to  
14 support us. It's very important.

15 And I come upon you, your Honor, as humble as I can  
16 and I know that America is a compassionate country. I just  
17 want to ask you for your compassion. I just beg you for your  
18 mercy, your Honor. That's all I have to say.

19 Thank you, your Honor.

20 THE COURT: Thank you, Mr. Napout.

21 Folks, we're going to take a five-minute break. It  
22 will be much shorter. Just in five minutes please return.

23 COURTROOM DEPUTY: All rise.

24 (Defendant exits from the courtroom at 1:46 p.m.)

25 (A recess in the proceedings was taken.)



1 (Defendant enters the courtroom at 1:50 p.m.)

2 COURTROOM DEPUTY: All rise. Have a seat, everyone.

3 THE COURT: I have considered very carefully the  
4 relevant factors set forth by Congress in Title 18, United  
5 States Code, Section 3553(a) which includes at least the  
6 modified advisory guideline range that I indicated before to  
7 ensure that I impose a sentence that is sufficient, but not  
8 greater than necessary, to comply with the purposes of  
9 sentencing.

10 Those purposes include the need for the sentence to  
11 reflect the seriousness of the crime, to promote respect for  
12 the law, to provide just punishment for the offense, to deter  
13 criminal conduct by this Defendant and others who would seek  
14 to engage in this type of crime and to protect the public from  
15 future crime by the Defendant.

16 I've also considered the nature and circumstances of  
17 the offenses in this case and the history and characteristics  
18 of the Defendant.

19 In addition, I've considered the need to avoid  
20 unwarranted disparities between similarly situated defendants.  
21 Let me discuss my consideration of those factors in particular  
22 or in detail.

23 First of all, as I think everyone agrees, the crimes  
24 of which Mr. Napout was convicted are serious crimes. They  
25 involved three separate bribery schemes that resulted in

1 \$150 million plus in bribes being promised and partially paid  
2 to corrupt soccer officials. The crime, in addition to the  
3 losses that it caused to these various soccer organizations,  
4 resulted in the destruction of the public's confidence and the  
5 reputation of professional soccer. There is no question about  
6 that.

7           These were not victimless crimes despite the defense  
8 arguments to the contrary that no one was harmed. These  
9 bribery schemes deprived soccer organizations including FIFA,  
10 CONMEBOL, and APF of millions of dollars in revenue from media  
11 and marketing companies. These were contracts that were  
12 negotiated not at arm's length, not with proper bidding, but  
13 rather were steered to these companies because of bribes taken  
14 by the Defendant and his co-conspirators. And that money,  
15 that bribe money, should have gone to those organizations at a  
16 minimum.

17           Indeed, as the letters even submitted by the  
18 Defendant show, these organizations do more than just organize  
19 professional soccer tournaments, but they seek to promote the  
20 sport of soccer and also organize and sponsor events for  
21 underprivileged youth in disadvantaged neighborhoods so that  
22 they can learn sportsmanship and a love for the sport of  
23 soccer. And the Defendant himself recognizes this based on  
24 the myriad of letters I've received. He is someone in  
25 particular who understood intimately and personally how

1 important these soccer organizations are to people in Paraguay  
2 and throughout the world.

3 So the theft in the millions, in the hundreds of  
4 millions, of money that should have gone to these  
5 organizations is absolutely a serious crime that does warrant  
6 significant punishment.

7 The defendant's motivation for this crime also makes  
8 it more serious and less understandable. There is no  
9 question, and it's even supported by the letters I've  
10 received, that supported letters, that, and as I quoted  
11 earlier, Mr. Napout was born in a "cradle of gold," that was  
12 one of the letters that I read.

13 He was born into privilege. His family was one of  
14 the most prosperous and well-respected and socially esteemed  
15 families in Paraguay. Mr. Napout himself, not without hard  
16 work, grew the business of his family and participated in its  
17 successful management for a number of years and achieved  
18 himself a high social standing and class and obviously a very  
19 comfortable lifestyle.

20 He then turned to professional soccer, and with  
21 great ambition, he wanted to lead the major organizations not  
22 only in Paraguay but ultimately on the international stage  
23 including CONMEBOL which he eventually did achieve.

24 At the time he started to engage in this bribery  
25 scheme, based on the record before me, to appears that his

1 family's business was earning on average for him \$75,000 per  
2 month. The report indicates that he got net profit instead of  
3 salary from that business. So this was a person who committed  
4 this crime not because of need but because of greed or some  
5 other misplaced value.

6 Now, I know Ms. Piñera-Vazquez tries to rebut this  
7 portrayal of the Defendant as greedy, but there is no other  
8 explanation for why he might have gotten -- not might, sorry  
9 -- what would have motivated him to get involved in this  
10 crime. And I should be careful because the defense arguments  
11 never acknowledge, and I understand why, that the Defendant  
12 has been convicted of these wire fraud schemes notwithstanding  
13 his maintenance of his innocence and the fact that he's going  
14 to appeal the conviction. But the jury found otherwise, and  
15 so, this was a person who, for no reason, other than obtaining  
16 millions of dollars that he didn't need, got involved in the  
17 separate bribery schemes.

18 Now, I won't belabor this point, but there is a need  
19 for general deterrence for the obvious reasons that there was  
20 and perhaps still a rampant culture of corruption in  
21 international soccer and other sports, and clearly, a message,  
22 a very strong message, of deterrence has to be sent to others  
23 who would engage in that type of conduct that will be met with  
24 serious consequences that you cannot steal millions in bribes  
25 from these organizations and have it go unpunished.

1           So it's not just about the arrest and the trial and  
2     the conviction and the shame that's attendant with that, and  
3     that's not an argument that I'm particularly fond of, but  
4     accepting it as it is, there has to be a strong message that  
5     there is a real consequence, that people do go to jail because  
6     they commit these crimes, and that it won't be a slap on the  
7     wrist. And for at that reason, I think there is a need for  
8     general deterrence it's quite strong here.

9           I know, Ms. Piñera-Vazquez, you mention that the  
10    impact of three to five years for a first-time offender may be  
11    great, but I don't agree with that. I think something more  
12    than that is required because first-time offender or no, three  
13    to five years is not necessarily significant when you weigh  
14    that against the prospect of getting millions and millions of  
15    dollars for your yourself and for your family.

16          The need to avoid unwarranted disparities amongst  
17    similarly situated defendants. As everybody knows, I've  
18    sentenced three defendants in this case: Mr. Trujillo,  
19    Mr. Takkas, and Mr. Marin.

20          Mr. Marin is perhaps the most apt comparator, but  
21    for reasons that have already been discussed, his situation is  
22    different. He is 86 years old and the sentence I impose was  
23    significantly reduced because of his age and the likelihood  
24    that jail would be much harder on him in his extremely  
25    advanced age than other defendants.

1           As the Government said, that situation does not, or  
2           that factor, does not pertain here. Mr. Napout is a  
3           significantly younger man.

4           The other distinction I would make is that  
5           Mr. Napout was much more involved in this conduct than  
6           Mr. Marin. I know that you argue, Ms. Piñera-Vazquez, that  
7           this Mr. Marin was convicted of more counts. But looking at  
8           the conduct itself and the number of years and the amount of  
9           money and bribes that Mr. Napout was going to get, his crime  
10          is far more serious. He was promised \$24.9 million in bribes  
11          between now and 2026. And actually, going back, I guess, to  
12          2010 to 2026 and Mr. Marin was involved for only three years  
13          during the time that he was the president of his country's  
14          federation.

15          So, unfortunately, Mr. Napout's conduct, regardless  
16          of what he was convicted of, is far more serious. And it's  
17          reflected to some extent in the guidelines of his leadership  
18          role. The fact that he engaged in obstructive conduct, and  
19          the dollar amount itself to some extent, although I've largely  
20          mitigated that.

21          So looking at Mr. Marin's sentence of four years is  
22          really not a particularly apt comparison for those reasons.

23          Mr. Trujillo obtained, or was only held responsible  
24          for \$425,000. So if I were literally to do the math based on  
25          the amount of bribe money that he was held accountable for,

1 and it's even money he was supposed to receive, Mr. Napout's  
2 crime is 58 times more serious and that would be a sentence of  
3 almost 40 years. I don't think these particularly  
4 mathematical calculations make a lot of sentence, but it is  
5 one metric if you want to look at it that way in terms of  
6 comparison.

7           Mr. Takkas, he was the bag man, for lack of a better  
8 word, for Mr. Webb and transported \$3 million and he got a  
9 15-month sentence, though, he never got a penny of any of the  
10 bribe money which was intended for someone else.

11           So, in this case, there aren't particularly apt  
12 comparators.

13           Now, I know the defense has pointed out other cases  
14 Mr. Edelman's, in particular, that they think gives some  
15 context for comparison of similarly situated defendants. Not  
16 soccer officials, but other individuals who engaged in  
17 large-scale fraud. I'm going to talk about the Edelman case  
18 in a moment.

19           Let me now address what the defense has argued very  
20 strongly favor for a lenient sentence or what they say are the  
21 most salient factors for purposes of giving a more lenient  
22 sentence.

23           First and foremost, is Mr. Napout's good character  
24 and good deeds. There is no question based on all the letters  
25 I've received and everything I've heard from

1 Ms. Piñera-Vasquez's argument that Mr. Napout is a generous,  
2 charitable, and kind man and has many done many good deeds for  
3 many people from a very young age all through the period that  
4 he was involved in these bribery schemes. That is not  
5 doubted.

6 And I do think what Judge Rakoff said in Edelman  
7 applies here. As the parties know in the Edelman case,  
8 Judge Rakoff had received, as he noted in his decision, over a  
9 hundred letters of support attesting to Mr. Edelman's good  
10 works.

11 And Judge Rakoff wrote with respect to that  
12 evidence, "If ever a man is to receive credit for the good  
13 work he has done, and his immediate misconduct assessed in the  
14 context of his overall life hither to, it should at the moment  
15 of his sentencing should be assessed in the moment of his  
16 sentencing when his very future hangs in the balance."

17 And that was quoted by the defense in their  
18 submission and I think aptly so in this case. There's no  
19 question, as I said, that Mr. Napout's life is characterized  
20 by generosity and kindness.

21 And as in Edelman, I've received 200-plus letters  
22 attesting to his good works and his good character throughout  
23 his life. Certainly, an outpouring of letters.

24 But I do have to note that in Edelman part of the  
25 reason Judge Rakoff gave a less strict sentence was because he



1 found that Edelman's crime, which involved a \$50 million fraud  
2 conspiracy, was one in which the Defendant was, and I quote,  
3 "Sucked into the fraud not because he sought to inflate the  
4 company's earnings, but because as the president of the  
5 company he feared the effects of exposing what he had  
6 belatedly learned was the substantial fraud perpetrated by  
7 others."

8 That is not the case here, and as the Government has  
9 argued and the evidence showed Mr. Napout entered into an  
10 ongoing scheme of bribery and corruption that was rife in  
11 FIFA, CONMEBOL, and professional soccer but he wasn't sucked  
12 into this bribery scheme. He willingly engaged in it and he  
13 perpetuated it and he used it to his better advantage even  
14 than over his other colleagues who were soccer federation  
15 presidents. So that mitigating factor, which Judge Rakoff  
16 considered in reaching his sentencing decision, does not apply  
17 here.

18 And therein lies the dilemma, I think, in this case.  
19 I'm having difficulty, or have had difficulty, when reading  
20 all this information in reconciling the two different  
21 portraits of the Defendant.

22 The first one painted by the defense team and his  
23 many supporters is one of someone who is a good, honest,  
24 upstanding, virtuous and simple man and has been so throughout  
25 his life.

1 But contrasting that is the one that I saw painted  
2 at trial based on the evidence of a man who was stealthy,  
3 sneaky, calculating, and greedy. Someone who negotiated for  
4 his own benefit and this is not helping others but this is  
5 helping himself get promises of over \$20 million of bribe  
6 money and then started to receive that money in secret ways to  
7 avoid getting caught.

8 And then, when it appeared that the investigation  
9 was circling in on him, he participated in this obstruction  
10 scheme to basically have his computer removed. But even if I  
11 didn't consider that, the difficulty that I'm having is that  
12 the evidence that I saw over the course of the multi-week  
13 trial portrayed Mr. Napout as someone who did not seek to to  
14 expose corruption, who did not act virtuously or honestly, or  
15 for the greater good of his country who looked up to these  
16 soccer players and who depended on him as the fiduciary of the  
17 Paraguayan Soccer Federation and CONMEBOL, and as an executive  
18 of FIFA to do the right thing to make sure these organizations  
19 got money they deserved from negotiating fairly media and  
20 marketing contracts with all of these different companies.

21 Instead, he did what everybody else did which is he  
22 started taking these massive bribes. And worse yet, he  
23 started negotiating for more bribe money for himself or at  
24 least started accepting it. Maybe the characterization of  
25 negotiating is too strenuous. But he certainly, based on the

1 evidence I saw and heard at the trial, starting accepting it.

2           So to borrow again from Judge Rakoff's analogy, I  
3 will certainly put weight, and substantial weight, in the  
4 balance for the defendant's good works, his charity and his  
5 generosity which he has a long history. And as you correctly  
6 point out, Ms. Piñera-Vazquez, up until his 55th or 54th year  
7 of his life that was, at least based on the record before me,  
8 what characterized his life.

9           But, on the other side of that balance, I cannot  
10 ignore the jury's verdict I cannot ignore the evidence that I  
11 saw and heard at trial that revealed another aspect of  
12 Mr. Napout's character and his conduct that he is someone who  
13 would, as a character reference, and did, in fact, steal  
14 millions from his beloved soccer organization and for no other  
15 reason than greed or maybe because of status or maybe because  
16 of a sense of entitlement but for no good purpose.

17           And this is a side of his character that based on  
18 these two opposing pictures that are being painted for me are  
19 at odds to be sure. And I think the defense very aptly  
20 characterized it in a situation when it entitled the section,  
21 "Contrast and Human Nature." That's exactly what the defense  
22 wrote. Then they wrote the defendant's conviction stands in  
23 stark contrast to the manner in which he led his life and  
24 adhere to the rule of law. I agree with that, but the problem  
25 is those are the two sides of balance that have to be applied

1 here at sentencing. So the seriousness of the conduct, the  
2 lack of actually in understandable motivation like financial  
3 desperation that goes in one side of the balance as does the  
4 need for general deterrence. It weighs heavily on that side  
5 against what is a considerable counterbalance of good works  
6 and good deeds up until that point and maybe even continuing  
7 through that point.

8           What seems to me the only way to reconcile these two  
9 opposing images that Mr. Napout had a public face, one that is  
10 reflected in all the letters I've seen and all of the  
11 accolades he seems to justly deserve from the public in  
12 Paraguay and maybe even beyond of his generosity, charity, and  
13 kindness.

14           But then this hidden character that he had, a hidden  
15 life, if you will, that he kept from the public all the while  
16 perpetuating this notion that he was a good guy, he was an  
17 honest guy, he was someone who was going to root out  
18 corruption and be transparent, but all the while taking bribes  
19 to the tune of 3.3 million accepted by the time he got  
20 arrested and then with a promise of 20-plus million more to  
21 come.

22           So it's not perhaps impossible to reconcile these  
23 two things. One is public, one is hidden, and that's exactly  
24 the way Mr. Napout, according to the evidence I heard, and as  
25 was established at trial, that's the way he wanted it. He

1 wanted it to be secure and he didn't want the public to know.

2           So I have certainly weighed his good work, but as I  
3 said, they are only one part of the balance sheet of the  
4 scales that have to be applied here.

5           The need for specific deterrence. I don't think  
6 there's a great need for specific deterrence for a few  
7 reasons. And not necessarily the reasons that the defense  
8 argues.

9           I certainly don't think that just eight months in  
10 jail and the extreme shame is enough to deter someone from  
11 committing crimes especially where if someone has always  
12 managed to maintain a face of honesty and goodness all the  
13 while doing corrupt deeds. That suggests to me somebody who  
14 has managed to perpetuate a self-image that many endorse or  
15 believe in, and a public image that they certainly foster of  
16 honesty but while still serving themselves in a certain way  
17 that's corrupt and illegal.

18           So, again, I don't think that specific deterrence  
19 has been served by the shame and the eight months, and even in  
20 the conditions of his pretrial release which I know the  
21 defense describes as destructive but, quite frankly, I think a  
22 lot of people in the world would like to live under such  
23 restrictive circumstances which included being out every day  
24 from 7:00 a.m. to 5:00 p.m., living in a nice apartment in  
25 Florida with an adjoining apartment for his family and having

1 dinner every day with his mother and being able to swim and  
2 engage in other activities that he enjoyed in a country that  
3 he apparently loves in the United States.

4 And let me go back for a minute. I do have to say  
5 that what you said, Ms. Piñera-Vazquez, is correct: You reap  
6 what you sow. And that is why I think the character and the  
7 prior good acts which are good character and the current bad  
8 acts. They do in some sense balance each other out and also  
9 to some extent they cancel each other out. So your words are  
10 correct, but they cut both ways.

11 But to go back to specific deterrence.

12 First of all, the fact that Mr. Napout may be banned  
13 from professional sports or soccer doesn't mean he may not  
14 commit some other illegal conduct. Financial crimes can be  
15 committed in all sectors.

16 I also think, based on the letters I've received,  
17 that Mr. Napout may have actually get a hero's welcome when he  
18 returns to Paraguay and that may be he will be welcomed back  
19 into the same circles. So I don't think there's any  
20 absoluteness or finality to his being banned from professional  
21 soccer, and certainly, from being -- having access to money  
22 where he can commit or having opportunities to commit other  
23 kinds of crimes like this.

24 Secondly, the fact, and I know this is a tricky  
25 thing to say, but the fact that there hasn't been any

1 expression at all by Mr. Napout without accepting  
2 responsibility or culpability.

3 I understand why he cannot do that and should not do  
4 that, but without even acknowledging that what the evidence at  
5 trial shows, or what the Government's overall investigation  
6 shows about the massive corruption that existed in all levels  
7 of soccer when he was there and in power, no acknowledgement  
8 of that or how it should be stamped out is something that  
9 doesn't reflect or doesn't necessarily bode well for his  
10 potential to recidivate or to re-offend of perhaps there's  
11 some notion that this isn't so bad. Perhaps there's some  
12 perception on his part that this is how business is done, I  
13 don't know. But if I'm weighing a factor, and if the defense  
14 wants me to find that there's no need for specific deterrence,  
15 I'm not convinced by what he has put forth so far and what  
16 I've seen in the record. And about the reasonable  
17 opportunities that will still exist for him should he decide  
18 he wants to commit another financial crime or fraud. So I  
19 consider that a neutral factor.

20 The mental health issues that I referenced I think  
21 merit consideration. There's no question that prison will in  
22 some ways be difficult for Mr. Napout in a way that's not  
23 common necessarily to other defendants. So I've given that  
24 some consideration and I won't belabor that point.

25 The fact that Mr. Napout is a non-resident alien of

1 the U.S. and, therefore, will be under more restrictive  
2 conditions in prison I don't give that much weight at all  
3 because that's certainly not uncommon.

4 Resident aliens or not non-resident aliens,  
5 foreigners, are convicted all the time about have to suffer  
6 the same conditions in prison. This doesn't distinguish  
7 Mr. Napout in any way, it's just the fact of our system. And  
8 also, I want to mention that the expert that the defense hired  
9 says that one of the consequences will be Mr. Napout will be  
10 confined most likely to be a low-security prison rather than a  
11 minimum security camp. I don't know if I think that's such an  
12 onerous, terrible, or unusual circumstance that it warrants a  
13 lesser sentence. A low-security prison certainly has many  
14 features of the security camp that has activities and it  
15 should be good, reasonable medical care, though, it may not be  
16 as extensive at the minimum security camp but that isn't  
17 compelling enough reason, in my mind, to grant a lower  
18 sentence.

19 The Government cites the case of U.S. v. Duque, 256  
20 Fed. App'x, 486. It's a Second Circuit case from 2007 which  
21 stands for the proposition that collateral effects based on a  
22 defendant's status as a deportable alien are, "Run of the  
23 mill," that's a quote, "and do not warrant a downward  
24 variance." And I generally tend to agree with that.

25 Certainly, the circumstances cited to me that relate



1 to Mr. Napout's incarceration of his immigration status are  
2 not extraordinary or compelling.

3 Also, with respect to not being able to return to  
4 the U.S., that's another collateral consequence that's  
5 unfortunate but that is a consequence of the defendant's own  
6 doing. Violating our laws appropriately deprives him of the  
7 right to come back to the U.S., and there's really nothing  
8 unusual about that nor do I think it's a factor that warrants  
9 a lesser sentence. Sadly, if he loved our country so much,  
10 one would hope he wouldn't commit a crime against it. Again,  
11 I don't find that to be a compelling mitigating factor or a  
12 mitigating fact at all.

13 So, summing it up, I have begun, as I said, even  
14 from a theoretical point of consideration from a much lower  
15 sentencing range than the one calculated in the guidelines  
16 that I did adopt, I started off at a point of 135 to  
17 262 months because, as I said before, given the unusual  
18 circumstances of this case, the appropriately calculated  
19 guidelines overstate the seriousness of Mr. Napout's conduct.

20 I have given some weight to the mitigating  
21 factors of Mr. Napout's prior good works and his health  
22 issues, mental health issues.

23 In terms of arriving at a sentence that I think is  
24 certainly lower than the Government is requesting and lower  
25 still from the range that I just mentioned.

1 I also want to make the point that I would have  
2 arrived at the sentence regardless of what the sentencing  
3 range was.

4 And, as another point of reference, even if all the  
5 enhancements were stripped away for the ones that had been  
6 disputed obstruction of justice foreign conduct or  
7 sophisticated means.

8 MS. MACE: Leadership.

9 THE COURT: Abuse of trust.

10 MS. MACE: Leadership position.

11 THE COURT: And leadership.

12 And if I applied only a 20-level enhancement for the  
13 amount of money that Mr. Napout was promised as part of that  
14 scheme the range would be 78 to 97 months still, so it's  
15 basically a Level 27.

16 Just to give you some idea of the fact that even  
17 taking away some of these enhancements that have been  
18 disputed, there is significant guideline range that would be  
19 applied based solely on the conduct that was proved at trial  
20 in terms of his own conduct what he agreed to take in terms of  
21 bribes.

22 But, again, the sentence I'm about to announce is  
23 one that I would have given regardless of what the guidelines  
24 are because I found ultimately that they were not that helpful  
25 and I am imposing a sentence of nine years. That is to run

1 it's on each count to run concurrent, that's 108 months. It  
2 is obviously far less than the Government was seeking, but I  
3 think it is the right and just sentence in this case which I  
4 think are considerable compassion and deference or weight  
5 being given to Mr. Napout's prior life and his good works as  
6 well as some of his health issues.

7 I am imposing a term of two years supervised release  
8 to follow that will run concurrently on each count as well the  
9 special conditions that apply to the supervised release are to  
10 comply with any restitution and forfeiture order or provisions  
11 that are imposed that upon request from Probation to provide  
12 full financial disclosure to Probation and, if deported, not  
13 to illegally reenter the United States.

14 In addition, there will be a special condition that  
15 Mr. Napout will not serve in any official role and/or hold any  
16 title in FIFA, CONMEBOL, APF or any professional soccer  
17 organization. Those terms will be spelled out in more detail  
18 in the judgment.

19 Regarding a fine. I do find that the Defendant has  
20 a means to pay a fine even recognizing that there will be a  
21 determination of restitution which will take priority. But  
22 nonetheless, I do think a fine is appropriate given the degree  
23 of fraud that was contemplated here.

24 So I'm imposing a fine of \$500,000 on Count One,  
25 which is the racketeering conspiracy count, and \$250,000 on

1 Counts Two and Six respectively for a total or \$1 million.

2 I will note that the defendant's financial  
3 circumstances are somewhat unclear to me based on the  
4 probation department's report, but the parties seem to agree  
5 that Mr. Napout's net worth is at least over \$5 million, and  
6 also that there is \$13 million being held in cash as part of  
7 his bail.

8 The only reason I didn't impose a higher fine is  
9 because there is a priority of restitution which will be  
10 substantial in this case it would appear. And also, it's  
11 unclear to me how much of the cash that that's been deposited  
12 in the court for bail in the clerk's office, or bail is the  
13 defendant's money versus the family members' money because I  
14 think that 13 million, as far as I understood it, was a  
15 pooling of family resources.

16 MS. PIÑERA-VAZQUEZ: Family and friends, it's not  
17 only family.

18 THE COURT: Okay. So, at this point, I'm going to  
19 impose a million dollar fine.

20 As I mentioned earlier, forfeiture is going to be  
21 ordered in the amount of \$3,374,025.88. And regarding the  
22 fine and forfeiture, do the parties want to discuss and come  
23 up with a proposal for a schedule for those that's what you  
24 did in the case of Mr. Marin.

25 MS. PIÑERA-VAZQUEZ: For restitution?

1 THE COURT: No, fine.

2 MS. PIÑERA-VAZQUEZ: For a hearing?

3 THE COURT: Well, no, for a schedule. In other  
4 words, the fine can be paid immediately in theory because  
5 there's money there to satisfy it. But I think the last time  
6 the Government was a little concerned about whether or not  
7 that would lead to money to be used for restitution if I  
8 remember correctly.

9 MS. MACE: That was the consideration. And so,  
10 because of the principle that your Honor referred to that  
11 restitution should come first, even though temporally, it will  
12 come second here that we need to ensure that restitution will  
13 be paid.

14 I don't think that that should have any effect on  
15 the amount of the fine or the forfeiture because, as the  
16 defense has argued, that the restitution should be zero. So  
17 it may be that there's more than enough in the bond to satisfy  
18 what's there, I think it would be prudent to reserve judgment  
19 on the schedule until the restitution amount is determined and  
20 if restitution is less we can move Ford media payment from the  
21 mind.

22 MS. PIÑERA-VAZQUEZ: Can I be heard so the record is  
23 clear?

24 We would object to any of the bond money going  
25 towards either the fine or the forfeiture until we have the

1 due process rights to a hearing on where the money came from  
2 because as stated because some of it is not Mr. Napout's  
3 money.

4 THE COURT: I don't think what you're saying is at  
5 odds with what Ms. Mace is proposing. I'm going to issue an  
6 order containing fine amounts scheduled to be determined  
7 following the resolution of proceedings and with additional  
8 briefing being allowed by parties to satisfied and general.

9 MS. MACE: I would just like to note for the record,  
10 I don't want to belabor this point out, because I think we  
11 will have an opportunity to do so later. But no one was  
12 revealed to the Government or the Court as a source of that  
13 money. And if it did not come from Mr. Napout, that would it  
14 be to the determination of bond it was represented that  
15 Mr. Napout's money and that was the understanding that we had  
16 until we got to sentencing.

17 And so, we will sort that out later in terms of  
18 whether or not the money can be used and I understand the  
19 defense wants to be heard on that. We will want to be heard  
20 on that as well but for today's purposes, I think all that is  
21 required is that upon the Government's motion which we're now  
22 making that the Court order under 28 U.S.C. 2044 that that  
23 money be held so that that determination can be made.

24 THE COURT: Yes, I certainly would order the money  
25 be held subject to further argument about the appropriate

1 disposition of it relating to Mr. Napout. I don't know what  
2 the bona fides of the argument or what arguments were made  
3 before about the source of the money but let's reserve on  
4 that.

5 MS. PIÑERA-VAZQUEZ: One thing I would like to  
6 address because I was part of that representation. The  
7 Government never requested an Nebbia on this hearing on this  
8 weapon.

9 THE COURT: A Nebbia hearing?

10 MS. PIÑERA-VAZQUEZ: Yes.

11 So what Ms. Mace is actually incorrect. We've  
12 always represented that this is a family pool of money. In  
13 fact that's what we said at the modification hearing.

14 So, just to be clear, because I don't want it to  
15 appear as if we just got here today and decided it was  
16 everybody else's money but Mr. Napout's.

17 THE COURT: We'll revisit this issue later. And,  
18 obviously, both sides will have a full opportunity to brief or  
19 discuss that issue or argue that issue.

20 Restitution, as everyone knows, will be decided  
21 later subject to the previously set schedule. But in no event  
22 will it be decided later than November 20th. And I'm using  
23 Mr. Marin's sentencing as the 90-day marker for that. But I  
24 want to decide both of those defendants' restitutionary  
25 amounts by that date. We will combine hearings and the

1 evidence will be largely the same and arguments will be  
2 largely the same.

3           Lastly, I must impose \$100 as a special assessment  
4 for each count of conviction and that totals \$300. That is  
5 due immediately.

6           Is there anything else I need to discuss relating to  
7 the sentence, not the right of appeal.

8           MS. PIÑERA-VAZQUEZ: Yes.

9           MR. WEINSTEIN: Two things.

10           One is I want to make sure, your Honor had said that  
11 we deal with the schedule on the fine issue subsequently.

12           THE COURT: Yes.

13           MR. WEINSTEIN: I want sure if your Honor meant the  
14 scheduling when we will want potentially work out with them  
15 whose money it is or come to the Court, or if you meant the  
16 actual payment schedule.

17           THE COURT: I meant the payment schedule.

18           MR. WEINSTEIN: So my concern in is that I know this  
19 was different from Mr. Marin we would not want to delay the  
20 entry of a judgment on the sentencing.

21           THE COURT: Right. Okay. So I will go ahead and  
22 enter the judgment with the understanding that at some point  
23 it will have to be amended because restitution will be  
24 determined later. I don't think it affects -- I mean, what I  
25 can say is that the schedule for the fine will also be set at



1 a later date.

2 So, again, contemplating an amendment after the  
3 schedule but that no money on the fine is due as of yet until  
4 after we determine the restitution and the priority of  
5 restitution.

6 MS. MACE: So if the Court is going to enter a  
7 judgment that includes, excuse me, the fine and forfeiture, I  
8 think it would be appropriate to set a date now or there's --  
9 I understand that it's possible the Court would amend that in  
10 the future but perhaps the Court could set the day after the  
11 last possible date before restitution as a due date for that  
12 money. Then if no restitution is ordered, then the money will  
13 become due immediately thereafter and a fine and the  
14 forfeiture. If there is some additional assessment that needs  
15 to be made, then the parties can make an application.

16 THE COURT: Here's another option since this  
17 sentencing is obviously one week after Mr. Marin's and the  
18 restitution deadline is, therefore, one week later. Would the  
19 parties think it is workable to basically set up a very quick  
20 briefing schedule right after restitution is decided to sort  
21 out these issues about the schedule for the fine and I guess  
22 as necessary any forfeiture payments once the resolution  
23 figures are set. Does that make sense? In other words, I can  
24 issue the amended judgment in this case, I have another week  
25 until November 27th to do that.

1 MS. MACE: I think that would be fine, your Honor,  
2 if there is some schedule set in the judgment now. So a  
3 proposal can be in that week or maybe in the end of that week  
4 so issues can be resolved in the course of that week.

5 THE COURT: So assuming that the week is --

6 (Discussion held off the record.)

7 THE COURT: So if November 20th is a Tuesday, and  
8 hopefully, I can actually resolve the restitution prior to  
9 that date, let's assume worst case scenario that's the day in  
10 which restitution was stayed for both Mr. Marin and Mr. Napout  
11 the parties could then brief by Thursday. So it's their  
12 opening submission about what the appropriate schedule is, no.

13 MS. MACE: I don't have a calendar, but I'm guessing  
14 that might be Thanksgiving or --

15 THE COURT: That Thursday or the one after.

16 COURTROOM DEPUTY: The Thursday -- Thanksgiving is  
17 the 27th.

18 THE COURT: So you're right. All right.

19 (Discussion held off the record.)

20 THE COURT: Let's do this folks. The fact that I  
21 have until the 28th doesn't mean you folks won't know what the  
22 lay of the land on restitution is before then. So why don't  
23 you start your briefing on the schedule for the fine and  
24 forfeiture. Include in that as well not only the schedule for  
25 the payments but also the source if you want to argue that it

1 should come out of this cash that's in being used for bail  
2 part of your argument.

3 So why don't we start that briefing we have  
4 November 20th so we don't run afoul of the holiday. So how  
5 about the 13th of November. You submit some opening letter  
6 briefs is all you need to do. Making an argument for what the  
7 schedule should be and maybe assume certain restitution  
8 amounts that would probably make sense.

9 You can think about this and always propose a  
10 different schedule of the 13th everyone files a make it five  
11 pages, folks, okay a five-page letter-brief putting forth your  
12 position what the schedule should be for million dollar fine  
13 and the 3.3 million roughly in forfeiture given a likely event  
14 of restitution amount being decided a certain restitution  
15 amount being set, rather. And then you can respond to each  
16 others on the 20th. And then I can reach make a decision on  
17 the schedule then the holidays on me basically and my law  
18 clerks.

19 All right. So I have until the 27th then to render  
20 a decision about the schedule and issue an amended order for  
21 Mr. Napout.

22 MS. MACE: So will the Court set a date that will be  
23 in place now in the form of this these briefs if anyone wants  
24 to file one would be a motion to amend the judgment.

25 THE COURT: Yes. Why don't we do it that way just a

1 motion to amend the judgment to include a schedule.

2 MS. MACE: I think a schedule needs to be set. It  
3 would be a motion to amend the judgment to change the  
4 schedule.

5 THE COURT: I guess. I'm not sure if I have to set  
6 the schedule now.

7 MS. PIÑERA-VAZQUEZ: You don't, your Honor, you  
8 don't have to set a schedule. You've imposed an incarceratory  
9 sentence, supervised release, you established a fine, that's  
10 all that has to be.

11 THE COURT: The tricky part is restitution. It is  
12 the only part that I have 90 extra days. I think Ms. Mace may  
13 be right, although I've never addressed this issue. I should  
14 set a schedule that can be amended. So why don't we set a  
15 schedule that if we do you know the full amount of the fine  
16 and the forfeiture will be due on November 27th unless it's  
17 amended so.

18 MS. MACE: Thank you.

19 MS. PIÑERA-VAZQUEZ: I have no doubt we're going to  
20 be filing a motion to amend, so can we make it a little bit  
21 later on, like, some time next year January if after.

22 I think November 27th we're definitely going to be  
23 filing a motion.

24 THE COURT: That's what you're going to argue about.  
25 You going to argue to me that it should be next year, two

1 years from now, or on a graduated schedule. So I'm just  
2 setting a precise date by which because I have to make a  
3 decision by then anyway so you can't run the risk that this  
4 will go into effect, I have to amend by then because we have a  
5 restitution order.

6 MS. MACE: Unless there is a scenario on which the  
7 full amount could be paid immediately and then the Court just  
8 left that in place. And if that were the case to should be  
9 paid immediately there would nobody reason to wait a year for  
10 that payment.

11 THE COURT: You'll have your chance to argue about  
12 the schedule before then. If you want to build in more time  
13 that's fine. If you all feel more comfortable you would like  
14 a little more time because, the one thing you didn't build in  
15 was oral argument on this we could set it back even further.  
16 Start your briefing on November 6th, responses on  
17 November 13th, argument on November 20th, and then I'll render  
18 a decision on the 27th.

19 If nothing else, it will give you some idea of which  
20 way I might be leaning on the 20th when we have oral argument  
21 and then I know you folks and you will not happy unless you  
22 get to say something about what you write. So perhaps we  
23 should especially with Mr. Weinstein.

24 MR. WEINSTEIN: I take that personally.

25 THE COURT: You make Ms. Piñera-Vazquez like look a

1 wallflower.

2 10:00 a.m. on November 20th for oral argument.

3 Okay. All right.

4 So we set that schedule and I will issue an order  
5 with a fine with the due date being November 27th as well as  
6 for the forfeiture I'm also going to impose interest if it's  
7 not paid by deadlines which will be the judgment rate of  
8 interest which I think fluctuates depending on when the  
9 default happens.

10 Okay. Anything else regarding the judgment, a  
11 recommendation as to designation.

12 MR. WEINSTEIN: That was the last matter. We would  
13 ask that your Honor recommend to the Bureau of Prisons that  
14 Mr. Napout be designated to FCI Miami in Florida to facilitate  
15 visits for his family from South America and then that he not  
16 be designated to one of BOP's privately contracted facilities.

17 THE COURT: I will certainly make that  
18 recommendation. Do you want him to be designated because once  
19 a judgment issues he will be designated and he probably won't  
20 be here for restitution hearing although it takes some time  
21 for that.

22 MR. WEINSTEIN: So I think what we would ask is to  
23 have the designation go through and then we will speak to  
24 Mr. Napout and maybe the Government about whether or not he is  
25 then transferred immediately upon designation or might be an

1 order that he should not be transferred until the end of the  
2 restitution proceedings.

3 THE COURT: It would have to be pursuant to a writ  
4 or something. So if the Government asked me to sign one, I  
5 would order one so that he could stay here for the hearing and  
6 then be sent to his personal national designation should this  
7 the become OP most faster than usual.

8 Okay. I think we've covered everything related to  
9 this sentence itself.

10 Mr. Napout, you have the right to appeal your  
11 conviction and sentence. Any notice of appeal must be filed  
12 within 14 days of the filing of entry of judgment or within  
13 14 days of the filing of the notice of appeal by the  
14 Government.

15 Now, all of that maybe affected by the fact that  
16 there's going to be an amended judgment. I'll let you folks  
17 figure out whether or not the 14 days runs from the date of  
18 issuance of the first judgment. I suggest the defendants err  
19 on this side caution. Go ahead and file your notice with  
20 14 days of the initial judgment. But, obviously, no appeal  
21 will happen until the final judgment is issued.

22 I actually think it should only apply after I issue  
23 the amended judgment since, but since one never knows if such  
24 a judgment might issue except for you folks here know that you  
25 shouldn't it rely on that and obviously you should use caution

1 in that regard.

2 If you request to file an appeal, Mr. Napout, the  
3 clerk will prepare and file a notice of appeal on your behalf.  
4 And if you cannot afford to pay for the cost of an appeal or  
5 appellate counsel, you have the right to apply for leaving to  
6 appeal in forma pauperis which means you can have filing fee  
7 waived and ask for court-appointed counsel.

8 Is there anything else that I need address appeal  
9 rights in either side.

10 MS. MACE: No, your Honor.

11 THE COURT: Open counts to dismiss in this case.

12 MS. MACE: No open counts but there are underlying  
13 indictment that we will anticipate making a motion to after  
14 any appeal but right now we are not making a motion.

15 THE COURT: Anything else we need to resolve before  
16 I excuse everybody?

17 MR. WEINSTEIN: Yes, your Honor.

18 Although based on what we heard today, I can predict  
19 the outcome but we need to raise with your Honor a renewed  
20 request for bail pending appeal.

21 THE COURT: That would be denied. I don't find that  
22 Mr. Napout has the likelihood of succeeding on appeal with  
23 respect to the conviction to be sure and I think sentence I  
24 have just imposed. One that's substantively and procedurally  
25 reasonable and I don't think there is a basis to find that it



1 will be vacated.

2           So for all those reasons, I'm not going to grant. I  
3 don't think he had a likelihood of succeeding on appeal which  
4 is obviously one of the factors.

5           Did the Government want to be heard on this at all?

6           MS. MACE: We oppose release for all the reasons  
7 that your Honor noted in addition to the reasons that we  
8 offered at the time of remand following the conviction the.  
9 Defendant is an extreme flight risks and a danger to the  
10 community and reasons evidence of which was presented at trial  
11 also support for denial of bail.

12           THE COURT: I do think that actually there is a  
13 heightened flight risk here to be sure. Mr. Napout obviously  
14 knows now full well what has happened in terms of his  
15 conviction and sentence and the sentence I imposed is  
16 obviously significant. So his reasons for wanting to flee are  
17 concrete now. And moreover, he knows that regardless of what  
18 happens he wouldn't be allowed to stay in the U.S.

19           So the combination of what I find not to be a  
20 likelihood of success on appeal coupled with the flight risk  
21 here prompts me to deny the request. But obviously it's  
22 something that you can take up with the Court of Appeals as  
23 well.

24           MR. WEINSTEIN: Of course. I think the standard is  
25 a substantial question. I don't think that would change your

1 Honor's decision.

2 THE COURT: No. But thank you.

3 MR. WEINSTEIN: But just to make the record.

4 THE COURT: You are right. I should actually -- I  
5 don't think there is a substantial question, certainly on the  
6 conviction, for appeal. I know that there were motions to  
7 dismiss. There were challenges to the application of wire  
8 fraud and money laundering statutes here I am fully familiar  
9 with those. I think the Circuit will agree, so I don't think  
10 there's a substantial question here.

11 You have raised, I think, what are some questions  
12 maybe substantial questions more on the application of some of  
13 these guidelines. But, again, as I said a moment ago, the  
14 sentence I imposed is largely divorced from the guidelines.  
15 As calculated, as reduced, and even as further reduced, if you  
16 stripped away all the enhancements you objected to, I impose a  
17 sentence that I thought was proposed based on the sentencing  
18 factors and especially on the defendant's personal  
19 characteristics. So for all those reasons I'm denying that  
20 request but obviously you will prick that up with the Court of  
21 Appeals.

22 I guess you will be to able to do that while final  
23 judgment is still pending, though.

24 MR. WEINSTEIN: That's why what I wanted to ensure  
25 was that there was a final judgment entered and that I don't

1 think restitution affects that at all because there's that's a  
2 separate order shall. But if there is an issue here as to a,  
3 I'm sorry, a fine schedule that is somehow going to --

4 THE COURT: It won't.

5 MR. WEINSTEIN: -- delay the entry of a final  
6 judgment if it's not then I think we're fine.

7 THE COURT: Well, the word is "final." I'm going to  
8 issue the judgment.

9 MS. MACE: And I think, your Honor, it would be a  
10 final judgment and to should be to indicated that it is and  
11 this is part of why we ask for a specific date. There can be  
12 a notion to amend the judgment thereafter but we should have a  
13 final judgment that indicates forfeiture and fine are due on  
14 November 27th. There has been discussion that there is likely  
15 to be an application to amend that but that should become a  
16 final order.

17 THE COURT: We will docket it as such and then I  
18 think it triggers not only the notice of appeal period but  
19 also then presumably your right to make the bail application  
20 to the Court of Appeals as well. Okay.

21 MR. WEINSTEIN: May Mr. Napout have a brief moment  
22 to talk to his family?

23 THE COURT: If the marshals are willing to do that  
24 just a few minutes.

25 MR. WEINSTEIN: I know Mr. Marin was afforded that

1 opportunity last week.

2 THE COURT: Would you indulge me and indulge member.

3 THE MARSHAL: Okay, Judge, sure.

4 THE COURT: I do appreciate it.

5 (Defendant exits from courtroom at 2:46 p.m.)

6 (WHEREUPON, this matter was adjourned.)

7  
8 \* \* \*